DOCUMENT RESUME

ED 131 731 FL 008 232

TITLE	Toward Meaningful and Equal Educational Opportunity. Report of Public Hearings on Bilingual-Bicultural Education.
INSTITUTION	California State Legislature, Sacramento. Assembly Special Subcommittee on Bilingual - Bicultural Education.
PUB DATE	Jul 76
NOTE	166p.
EDRS PRICE	MF-$0.83 HC-$8.69 Plus Postage.
DESCRIPTORS	American Indians; Asian Americans; *Biculturalism; *Bilingual Education; Chinese Americans; Court Litigation; *Educational Legislation; Educational Opportunities; Educational Philosophy; *Educational Policy; Equal Education; Federal Programs; Filipino Americans; Japanese Americans; Language Programs; Portuguese Americans; Spanish Americans; *State Programs

ABSTRACT

This report summarizes testimony taken from 103 witnesses during six public hearings on bilingual-bicultural education held between October 27 and December 9, 1975 in San Diego, Los Angeles, Fresno, and San Francisco by the Special Subcommittee on Bilingual-Bicultural Education of the California State Assembly. The report is divided into four chapters. Chapter 1, "Bilingual Program Background," describes the history and status of federal and state bilingual programs. Chapter 2, "Legal and Philosophical Aspects of Bilingual-Bicultural Education Programs," provides a brief history of the philosophies of bilingual education in the state and the nation through the various court decisions preceding and including the Lau decision. Chapter 3, "Synopsis of Testimony Presented to the Special Subcommittee," groups the testimony presented from the major language-cultural groups in the state (Spanish, Chinese, Japanese, Filipino, Portuguese, Southeast Asians, and Native Americans) under the three general areas of Program, Evaluation, and Funding. Chapter 4, "The Legislative Options for Bilingual Bicultural Education," categorizes over two hundred recommendations presented to the Special Subcommittee in the public hearings and communications to the Subcommittee concerning bilingual policy, program and administrative options available to the Legislature. Among the recommendations were the following: (1) that the "Lau Remedies" should be a minimum program requirement; and (2) that local boards of education should be required to adopt policies in conformity with federal regulations. (Author/CFM)

Documents acquired by ERIC include many informal unpublished materials not available from other sources. ERIC makes every effort to obtain the best copy available. Nevertheless, items of marginal reproducibility are often encountered and this affects the quality of the microfiche and hardcopy reproductions ERIC makes available via the ERIC Document Reproduction Service (EDRS). EDRS is not responsible for the quality of the original document. Reproductions supplied by EDRS are the best that can be made from the original.

ED131731

FL008232

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

TOWARD MEANINGFUL AND EQUAL EDUCATIONAL OPPORTUNITY

Report of Public Hearings on Bilingual-Bicultural Education

BY THE SPECIAL SUBCOMMITTEE ON BILINGUAL BICULTURAL EDUCATION OF THE CALIFORNIA STATE ASSEMBLY

4.28.75

ar need

U.S. SUPREME COURT decision, Lau ... hools, held that San Francisco schools were ... ng non-English speaking students equal ... cational opportunity because the district ... asn't trying hard enough to overcome their ... language handicap.

The decision, of course, is applicable nation wide and so is the problem. In the Southwest ...

San Bernardino Schools cheat Mexican American children

LANGUAGE DISCRIMINATION ILLEGAL

Bilingual Teacher Education Pushed As Need Shown

A San Diego State University dean who recently attended a White House conference on bilingual education said ...

Failures in Bilingual School Plan Alleged

BY JACK McCURDY
Times Education Writer

The state Department of Education has failed badly in overseeing the ... of bilingual programs for ...

SAN BERNARDINO SUN-Telegram

S.B. bilingual coordinator quits, says support lacking

Aug. 75

Bilingual Education—Investing in the Future

...blisher tells of bilingual advantages

TOWARD MEANINGFUL
AND
EQUAL EDUCATIONAL OPPORTUNITY

REPORT OF PUBLIC HEARINGS
ON
BILINGUAL-BICULTURAL EDUCATION

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

By The
SPECIAL SUBCOMMITTEE ON
BILINGUAL-BICULTURAL EDUCATION
OF THE
CALIFORNIA STATE ASSEMBLY

SUBCOMMITTEE MEMBERS

PETER R. CHACON, Chairman
DIXON ARNETT
WILLIAM CAMPBELL
FLOYD MORI
JOHN VASCONCELLOS

SUBCOMMITTEE STAFF

ROBERT G. BUCKENMEYER
Principal Consultant

VICKIE WRIGHT
Subcommittee Secretary

July, 1976

TOWARD MEANINGFUL AND EQUAL EDUCATIONAL OPPORTUNITY

TABLE OF CONTENTS

SUMMARY OF FINDINGS & RECOMMENDATIONS................i
PREFACE..iii

CHAPTER 1: BILINGUAL PROGRAM BACKGROUND

- The Federal Program................................1
- The "English-only" Policy of States..............3
- California's Legislative Efforts for Pupils Whose Native Language is Other Than English....5
- California's Bilingual Programs..................6
- Federal Migrant Programs.........................11
- California's Migrant Master Plan.................12
- Other "Compensatory" Regular School Programs Eligible to Provide Bilingual Services..........14
- American Indian Programs.........................18
- Federal American Indian Programs.................19
- State American Indian Programs...................23
- State and Local Decisions on Bilingual-Bicultural Programs..............................25

CHAPTER 2. LEGAL AND PHILOSOPHICAL ASPECTS OF BILINGUAL-BICULTURAL EDUCATION PROGRAMS

- The Political Question of Ethnic Identity vs. Assimilation..................................28
- The Legal Right to Bilingual-Bicultural Education....................................31
- The Legal Right to Equal Educational Opportunity.36
- Lau and Two Questions Concerning Bilingual Education....................................38
- Situations Complicating Solutions to the Questions....................................39
- Later Court Decisions Clarifying Solutions to the Questions.............................41
- Bilingual Education as an Equal Educational Right..43
- Current California Civil Actions Requiring Answers to the Questions.....................44
- The Lau Remedies and HEW Memoranda Clarifying Answers to the Questions.....................44
- The Responsibility of the Chief State School Officer in Relation to Limited-English-Speaking Pupils..............................49

The State Board of Education "Policy" Statement....53
The Philosophical Question Concerning the Optimum Bilingual Program....54

CHAPTER 3: SYNOPSIS OF TESTIMONY PRESENTED TO THE SPECIAL SUBCOMMITTEE

1. Bilingual Program Area....57
   The Lack of Clear State-Level Policy....58
   a) The State Department of Education and Bilingual Programs....60
   b) Bilingual Program Goals....61
   c) Need for Coordination of Federal, State and Local Programs....62
   d) Qualifications of Bilingual Instructional Personnel....63

2. Evaluation of Bilingual Programs....66
   a) State Department of Education and Bilingual Evaluation....68
   b) Bilingual Program Goals....69
   c) Need for Coordination of Bilingual Program Evaluation....70
   d) Qualifications of Personnel Evaluating Bilingual Programs....70

3. Bilingual Program Funding....72
   a) The State Department of Education and Bilingual Funding....72

CHAPTER 4: THE LEGISLATIVE OPTIONS FOR BILINGUAL-BICULTURAL EDUCATION

The Chief School Officer and the Need for Bilingual Program Enforcement....75
Bilingual Policy Options of the Legislature....76
Recent Legislative Policy Decisions and Possible Bilingual-Bicultural Policy Decisions...78
Bilingual Policy and Programs Chosen by Other State Legislatures....80
Summary of Bilingual Policy Options Available to the Legislature....85
Bilingual Program and Administrative Options Available to the Legislature Based on Policy Decisions....88

FOOTNOTES CHAPTER 1....................................94

FOOTNOTES CHAPTER 2....................................98

FOOTNOTES CHAPTER 3....................................103

FOOTNOTES CHAPTER 4....................................111

BIBLIOGRAPHY...114

APPENDICES

APPENDIX A - Lau v. Nichols Decision

APPENDIX B - DHEW "Departmental Position on Bilingual Education"

APPENDIX C - Department of Education Title I, ESEA Assurance Contract

APPENDIX D - State Attorney General Opinion CV 75/286 I.L.

APPENDIX E - State Attorney General Opinion CV 74/250

APPENDIX F - Legislative Counsel Opinion No. 22468

APPENDIX G - DHEW "Identification of Discrimination and Denial of Services on the Basis of National Origin"

SUMMARY
FINDINGS AND RECOMMENDATIONS
OF THE
SPECIAL SUBCOMMITTEE ON BILINGUAL-BICULTURAL EDUCATION[1]

FINDINGS

POLICY

- inconsistency between state and federal bilingual policies
- unclear state level bilingual program policy
- lack of bilingual policy by local boards of education

PROGRAM

- lack of bilingual instructional definitions and minimum instructional requirements
- inappropriate LES language assessment procedures
- lack of relevant state and local bilingual evaluation procedures
- failure to notify and involve LES parents
- inadequate pre- and in-service training for staff in bilingual instructional techniques
- insufficient bilingual instructional and administrative personnel in districts and teacher preparation programs
- need to develop relevant bilingual materials for LES pupils

ADMINISTRATION

- failure of state Office of Bilingual Education to formulate policy and monitor programs
- need for state level bilingual program planning
- inadequate monitoring of bilingual programs by the State Department of Education
- insufficient bilingual personnel to advise school districts
- need for coordination among categorical programs serving the linguistic needs of LES pupils
- contradictory information provided to LEAs by different State Department of Education personnel and offices

---

[1] Chapter 3 presents a complete discussion of the hearings conducting by the Special Subcommittee. Chapter 4 develops the policy options and presents the full text for the recommendations.

RECOMMENDATIONS

POLICY

- specify the "Lau Remedies" as a minimum program requirement for LES pupils
- require that bilingual programs also be bicultural
- provide school districts supplemental funding only for direct bilingual instruction costs
- require local boards of education to adopt bilingual policies in conformity with federal regulations
- establish a state-level Commission on Bilingual-Bicultural Education

PROGRAM

- require that staff with certified bilingual-bicultural skills conduct bilingual programs
- require a five year bilingual education plan
- require that language assessment instruments be administered by personnel skilled in the language of the LES pupils
- require active involvement of LES parents and bilingual staff in the planning, implementation and evaluation of bilingual programs

ADMINISTRATION

- re-establish an Office of Bilingual-Bicultural Education within the State Department of Education
- provide that the Office of Bilingual-Bicultural Education recommend policy and monitor programs
- withhold supplemental funds from districts which do not comply with laws and regulations
- establish requirements for pre- and in-service training programs for staff serving LES pupils

PREFACE

Assembly Speaker, Leo T. McCarthy, established the Subcommittee on Bilingual-Bicultural Education, September 11, 1975, at the request of Peter R. Chacon, D., Assemblyman Seventy-Ninth District, San Diego. The Speaker named Dixon Arnett, R., Assemblyman Twentieth District, San Mateo; William Campbell, R., Assemblyman Sixty-Fourth District, Los Angeles County; Floyd Mori, D., Assemblyman Fifteenth District, Southern Alameda; and John Vasconcellos, D., Assemblyman Twenty-Third District, San Jose, as members and appointed Assemblyman Chacon as Chairman.

The Speaker reconstituted the subcommittee as a Special Subcommittee on January 29, 1976, and reappointed the original Chairman and members.

The purpose of the Special Subcommittee was to hold statewide hearings to determine:

1. the status of present bilingual programs in meeting the needs of pupils whose native language is other than English and who are non- or limited-English-speaking (LES);[1]

2. legislation needed to meet the requirement of the Lau v. Nichols decision;[2] and

3. legislation otherwise needed to improve the present program.

This report synopsizes one hundred and thirty-six dictation tapes of testimony, totaling over 1,200 pages, taken from one hundred and three witnesses during six public hearings held between October 27, 1975 and December 9, 1975 in San Diego, Los Angeles, Fresno and San Francisco.

Chapter 1 "Bilingual Program Background," describes the history and status of federal and state bilingual programs.

Chapter 2, "Legal and Philosophical Aspects of Bilingual-Bicultural Education Programs," provides a brief history of the philosophies of bilingual education in the United States and California through the various court decisions preceding and including the latest Lau v. Nichols decision. This chapter places the different philosophies of bilingual education in the context of the legal history which the language of instruction has generated by the demands of Native Americans to educational programs claimed as their landed rights and of emigrees to educational programs claimed as their cultural and taxpaying rights.

Chapter 3, "Synopsis of Testimony Presented to the Special Subcommittee," groups the testimony presented from the five major language-cultural groups in the State (Spanish, Chinese, Japanese, Filipino and Portuguese) Southeast Asians, Native Americans and many others under the three general areas of Program, Evaluation, and Funding.

Chapter 4, "The Legislative Options for Bilingual Bicultural Education," categorizes over two hundred recommendations presented to the Special Subcommittee in the public hearings and communications to the Subcommittee within the context of bilingual policy, program and administrative options available to the Legislature.

The Special Subcommittee on Bilingual-Bicultural Education presents this report to the Assembly of the California State Legislature.

Members of the Special Subcommittee are:

Pete Chacon

PETER R. CHACON, Chairman

Dixon Arnett

DIXON ARNETT

WILLIAM CAMPBELL

Floyd Mori

FLOYD MORI

JOHN VASCONCELLOS

CHAPTER 1

BILINGUAL PROGRAM BACKGROUND

> Findings of Congress: Section 701 of the Act Jan. 2, 1968, provided: "The Congress hereby finds that one of the most acute educational programs in the United States is that which involves millions of children of limited English-speaking ability because they come from environments where the dominant language is other than English; that additional efforts should be made to supplement present attempts to find adequate and constructive solutions to this unique and preplexing educational situation; and that the urgent need is for comprehensive and cooperative action now on the local, state and federal levels to meet the serious learning difficulties faced by this substantial segment of the Nation's population."[3]

The Federal Program

The first "Bilingual Education Act," established by Congress through Public Law 90-247, added Title VII to the Elementary and Secondary Education Act of 1965 and took effect January 1, 1968. This federal action was the direct result of two situations. First, public school bilingual programs established for the Cuban immigrants during 1960-67 were successful and drew national attention to bilingual instruction as a means of teaching pupils whose primary language was not English. Secondly, hearings conducted by the Special Congressional Subcommittee on Bilingual Education (of the Committee on Labor and Public Welfare) from May through July, 1967, emphasized the urgency for a federally sponsored bilingual program to meet the needs of the increasing number of Hispanic and Asian LES pupils enrolling in public schools in Washington, Texas, New York City, California and elsewhere.

This "Bilingual Education Act" appropriated federal funds for a six year period: $15 million to plan for the program until June 30, 1968; $30 million for 1968-69; $40 million for 1969-70; $80 million for 1970-71; $100 million for 1971-72; and $135 million for 1972-73. The first two activities required under this act were: (1) bilingual education programs and (2) programs designed to impart to pupils a knowledge of the history and culture associated with their language.

"Bilingual education" was defined as "the use of two languages, one of which is English, as mediums of instruction."[4] Both these requirements were implemented within the general framework of the compensatory program provisions of the

Elementary and Secondary Education Act. Thus, the federal bilingual education program became a means of providing its participants with a transitional bilingual program until they could function in classes wherein English was the basic language of instruction. The program means permitted bilingual instruction, but the program goal precluded pupils from achieving the effects of a full bilingual program because the goal was limited to providing participants English-speaking skills only.

The Act provided that school districts assume the cost of the bilingual services at the termination of the grant award because the Congressional policy was that these supplemental funds were only to aid state build their bilingual program capacity. The ultimate responsibility for developing and maintaining such programs was a state and local one.

The English-Only Policy of States

To make public school systems eligible for the federal bilingual funds, various states had to remove "English only" instruction statutes from their law books. California's second Superintendent of Public Instruction, Paul K. Hubbs, ennunciated this "English only" policy in 1856. This policy became law through Senator Dillworth's SB 2, Chapter 2, Statutes of 1959, and first appeared in the 1959 codification of the Education statutes. California became one of thirty-eight states to enact an "English only" instruction provision between 1890 and 1967. The enactment of Senator Short's SB 53 amended out the "English only" instruction provision in Sections 71 and 12154 of the Education Code on January 1, 1969. California's public schools then received $3.5 million in federal Title VII bilingual funds to support programs in public schools during the 1969-70 fiscal year.

The latest statistics show that California received $21.4 million during the 1975-76 fiscal year, 26% of the federal funds appropriated nationally. These funds supported 90 school district projects at a cost of $14.5 million. The remainder of the funds support 381 higher education traineeships, 2 resource centers, 2 materials development centers and 10 institutional assistance grants.

Table I details California's participation in the Title VII program from 1969 through 1976.[5]

TABLE I

Title VII 1969-1976

	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76
Total Funds Appropriated	$7.5 M	$10 M	$25 M	$35 M	$58 M	$85 M	$85 M
California's Share	$3.5M	8 M	10 M	12 M	12 M	16 M	21.6 M
No. of School Programs	27	45	50	59	56	107	90
No. of Sites	27	45	50	59	56	107	75
No. of Pupils	6,303	12,952	20,037	27,138	35,129	63,941	54,823
No. of Trainee-ships	X	X	X	X	X	X	381
No. of Resource Centers	X	X	X	3 sp. programs	4 sp. 3 on going	3 sp programs	1
No. of Materials Devel. Centers	X	X	X	X	X	X	1
No. of Institutional Asst. Grants	X	X	X	X	X	X	10

California's Legislative Efforts for Pupils Whose Native Language is Other than English

California's first legislative effort to address the needs of LES pupils was the Unruh Preschool Act, AB 1331, Chapter 1248, Statutes of 1965. This Act amended the Education and Health and Welfare Codes so that California could use federal funds appropriated for social services in the state's

Compensatory Education Preschool Program. Section 1646 of the Health and Welfare Code provided that:

> Special priority shall also be given to children from families in which English is not the language primarily used in the home in order that they may develop that degree of English facility necessary to profit from school instruction.

The available evidence, however, indicates that this legislative priority did not receive state agency priority. The State Preschool Guidelines dated 1972, issued by the Bureau of Compensatory Education, made no mention of this priority. An audit of the State Preschool Program conducted by the State Department of Finance, dated January, 1974 (Report No. PR-79), noted its lack of implementation. The State Preschool Program Guidelines issued May 1, 1975, reintroduced this priority and, at the same time, provided that LES pupils receive bilingual instruction. The State Department of Education has no data available on the extent to which these bilingual program provisions were or are being implemented.

California's Bilingual Programs

Assemblyman Deddeh's AB 116, Chapter 1521, Statutes of 1972, was the first legislation to provide state funds for a bilingual program. The legislation sought to determine the best method of providing pupils "instruction in a language more understandable to them." The bill authorized the San Diego and San Francisco pilot projects to offer bilingual instructional programs in English, mathematics and social sciences to "non- or limited-English-speaking pupils who were receiving English-as-a-Second-Language instruction." The Superintendent of Public Instruction was to report the results of this study to the Governor and the Legislature at the end of the pilot project on June 30, 1975. Former Governor Reagan cited this pilot study in his veto message of Senator Stiern's SB 1020 as one of the sources which would supply data in "finding the best solution to bilingual problems."[6]

SB 1020 was the first bilingual-bicultural education legislation to be enacted by the California State Legislature in 1971. The bill was permissive legislation and would have appropriated $1.8 million for program implementation had the Governor not vetoed it. The intent of the Legislature was to provide a high quality bilingual-bicultural program in the public schools (kindergarten and grades 1-12, inclusive), that would permit development by students of educational concepts and skills. The legislation defined "bilingual-bicultural education" the same as did the "Bilingual Education Act of 1972," with one exception. The Stiern legislation specified "language and culture" to be "inseparable" and made "culture a strong component of the bilingual-bicultural means of instruction."[7] This language is absent from the "Bilingual Education Act of 1972" and in its place is the goal of developing "intergroup and intercultural awareness" and the "appreciation of cultural differences and similarities."

The Title VII "Bilingual Education Act," therefore, had two effects on bilingual programs throughout the United States: first, the Title VII grants stimulated the states to change their English-only instructional laws so they would be eligible for federal bilingual funds. Secondly, it stimulated states to enact their own bilingual laws because Title VII grantees signed an agreement promising to continue these program services at the end of an approximate five year funding period. Thus, several states passed "Bilingual Education Acts" and appropriated state funds for their implementation during 1972-73. California did so in December of 1972 when Governor Reagan signed into law, AB 2284, Chapter 1258. The Bilingual Education Act of 1972 was authored by Peter R. Chacon, Assemblyman from San Diego and appropriated $5 million to fund bilingual education programs in California. One million dollars of this amount went to program planning. The primary goals of this permissive legislation were "to develop competence in two languages for all participating pupils; to provide positive reinforcement of the self-image of participating pupils; and to develop intergroup and intercultural awareness among pupils, parents and staff in participating school districts."[8]

Sixty-nine school districts enrolling a reported 46,107 LES pupils in bilingual instructional classes were served by this Act with the $3.9 million appropriated for fiscal year 1973-74. These AB 2284 programs were implemented without the benefit of Title 5 administrative regulations required by the legislation until April of 1975 when the State Board of Education approved regulations submitted by the State Department of Education.

The 1974-75 Budget Act continued the same appropriation, but through the efforts of Assemblyman Chacon, Assembly

Speaker Leo T. McCarthy and other legislators, Governor Edmund G. Brown, Jr., agreed to augment the original appropriation by $4.5 million. Statistics compiled from the "1975-76 AB 2284 Grants and Student Population Report," issued by the Office of Bilingual-Bicultural Education, Department of Education, dated March 29, 1976, show that this augmentation funded 48 new bilingual programs to serve 5,755 additional LES pupils and the expansion of 41 present bilingual programs to serve 6,840 more LES pupils. Table II provides an overall view of the state funded bilingual programs from 1972 to 1976.[10]

TABLE II

Bilingual Education Act 1972-1976

	1972-73	1973-74	1974-75	1975-76
Appropriation	$1 M Planning	$4 M	$4 M	$8.5 M
No. of Districts Funded	60	69	72	118
No. of Sites Funded	NA	NA	NA	435
No. of NES/LES Pupils Served	46,107	8,993	11,077	25,293
No. of Monolingual English Pupils Served	32,142	11,233	11,529	15,743
Total Number of Pupils Served	78,249	20,216	22,606	41,036

Federal Migrant Programs

Congress amended Title I of the Elementary and Secondary Education Act through P.L. 90-247 (1968) and specified that programs be "designed to meet the special educational needs of migratory children."[11] The program was amended further by the Education Amendments of 1970 (P.L. 91-230), 1972 (P.L. 92-318), and 1975 (P.L. 93-380). These amendments clarified definitions and added program service elements, such as child care services for migrant pupils. At no time, however, have federal law or federal regulations required bilingual instruction for migrant pupils served, although 91% of the 83,000 children of California migrant agricultural workers between ages 3-17 are Mexican Americans whose primary language is Spanish.[12] The National Migrant Program Guidelines issued by DHEW specify six types of "Instructional Services," but no bilingual instructional requirement or suggestion is included.[13] Table III shows the extent of federal migrant program funding for 1966-1976.[14]

TABLE III

	Title I ESEA Federal Funds	No. of Pupil Participants	Federal	State/Local	No. of Child Participants
1966-67	1,420,932	11,163	X	X	X
1967-68	6,150,119	26,469	X	X	X
1968-69	6,106,501	43,345	X	X	X
1969-70	6,709.604	46,829	765,430	209,146	932
1970-71	7,368,421	56,000	1,297,000	349,000	1,237
1971-72	8,285,802	56,400	1,297,000	349,000	1,023
1972-73	9,262,289	56,800	1,297,000	349,000	1,100
1973-74	9,832,415	49,603	980,000	327,000	1,100
1974-75	17,007,082	53,000	1,394,000	686,000	1,391
1975-76	18,509,670	83,000	1,582,000	763,000	1,455

California's Migrant Master Plan

AB 1062, Chapter 1037, Statutes of 1973, authored by John Vasconcellos, Assemblyman for the Twenty-Fourth District, required the State Board of Education to adopt and submit a Migrant Master Plan to the Legislature in April of 1974. The resulting California's Master Plan for Migrant Education specifies the first of ten goals for migrant pupils to be "to develop skills in reading, writing, and listening in English and their dominant language."[15] The plan specifies that "the supplementary instruction for Mexican-American children will be planned within a bilingual-bicultural framework and should be related to major areas of the school curriculum." The "Assessment of Instructional Needs" does not say whether or not "each child's developmental level" is to be assessed in the pupil's primary language or English. Neither does the plan specify that the "supplementary instruction" shall be conducted by bilingual teachers, although it does say "the classroom teacher" will diagnose and prescribe supplementary instruction "supported by trained bilingual tutors and resource teachers."[16]

Statistics released by the Office of Compensatory Education, Migrant Education Section, show that only 50%-53% of the certificated personnel instructing 91% Mexican-American pupils in the seven California migrant regions are Spanish-surname. The report says nothing about whether the personnel are bilingual. Table IV provides an overview of the situation; Table V shows that 90% of the paraprofessional staff are Spanish surname, but again, no mention is made of whether these paraprofessionals are bilingual.[17]

TABLE IV

Certificated Personnel

REGION	NO. OF CERTIFICATED PERSONNEL		NO. OF SPANISH-SURNAME CERTIFICATED PERSONNEL		PERCENT OF SPANISH SURNAME CERTIFICATED PERSONNEL		PERCENT OF SPANISH-SURNAME STUDENTS	
	1974	1975	1974	1975	1974	1975	1974	1975
I.	26.00	45	14.0	24	60.9%	53.3%	96.9%	94.9%
II.	13.00	18	5.0	4	38.5%	22.2%	84.3%	83.4%
III.	13.00	10	2.5	3	19.2%	30.0%	92.9%	88.5%
IV.	15.00	20	3.0	8	20.0%	40.0%	88.9%	88.8%
V.	24.00	22	11.0	11	45.8%	50.0%	81.2%	88.4%
VI.	11.75	11	2.0	5	17.0%	45.5%	95.0%	96.8%
VII.	2.00	9	0.0	1	0%	11.1%	96.6%	95.4%

TABLE V

Paraprofessional Personnel

REGION	NO. OF PARAPROFESSIONAL/CLASSIFIED PERSONNEL		NO. OF SPANISH-SURNAME PARAPROFESSIONAL/CLASSIFIED PERSONNEL		PERCENT OF SPANISH-SURNAME PARAPROFESSIONAL/CLASSIFIED PERSONNEL		PERCENT OF SPANISH-SURNAME STUDENTS	
	1974	1975	1974	1975	1974	1975	1974	1975
I.	202.75	357.50	194.25	338.50	95.9%	94.7%	96.9%	94.9%
II.	99.00	291.00	80.00	266.00	80.8%	91.4%	84.3%	83.4%
III.	118.00	121.00	103.00	115.00	87.3%	95.0%	92.9%	88.5%
IV.	111.91	231.47	86.21	180.95	77.1%	78.2%	88.9%	88.8%
V.	186.50	304.00	138.00	231.00	74.0%	80.0%	81.2%	88.4%
VI.	111.75	136.00	95.50	126.00	85.4%	92.6%	95.0%	96.8%
VII.	51.50	74.00	48.50	70.00	94.2%	94.6%	96.6%	95.4%

Other "Compensatory" Regular School Programs Eligible to Provide Bilingual Services

Additional bilingual program services could be provided with the so-called Compensatory Education funds available through the federal Elementary and Secondary Education Act (ESEA Title I), the federal Emergency School Aid Act (ESAA) and the State's SB 90/Educationally Disadvantaged Youth Act (SB 90/EDY). These programs specify lack of English skills as a priority item for funding. In March of 1973, the Bilingual Education Task Force prepared a comprehensive plan for developing bilingual-bicultural education programs in all state and federally funded programs, including the State's Early Childhood Education (ECE) programs (K-3) through the A127 Consolidated Application process.[18] The Department of Education has included bilingual education provisions in the A127 Elementary School (ES) and Secondary School (SEC) level plans for the 1976-77 school year. The process from "drafted plan" to field implementation has taken more than three years. However, no assurance exists as to whether or not bilingual services are in fact provided to LES pupils served by these programs because the Department of Education does not require that such pupils be taught by instructors possessing bilingual skills.

Title I regulations specify the eligibility of pupils whose native language was other than English and the state legislation, authorizing the EDY program, identified the "potential impact of bilingual-bicultural pupils" as one of the three indices according to which "maximum apportionments allowable to school districts shall be determined."[19] Title I defined "educationally deprived children" to include pupils "whose needs for such special educational assistance result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large."[20]

Table VI shows that 12,872 NES and LES pupils received Title I program services at a cost of $323/pupil in 1974-75; 7,150 received Title I migrant services at a $123 cost/pupil and some 4,842 received Emergency School Aid Act program services at a $633 cost/pupil.[21] The table also indicates that 8,670 NES and LES pupils received SB 90/EDY services at an average cost of $252/pupil. An additional 64,174 NES and LES pupils are shown receiving services in programs co-funded with these and other state and federal funds at a $374 cost/pupil.

TABLE VI

State and Federal Programs Serving Limited-English (LES) and Non-English Speaking (NES) Children, 1974–75

Funding Source	*LES and NES Students Served*	*Program Expenditures*	*Cost Per Student*
STATE FUNDING			
Bilingual Education Act of 1972, Chapter 1258/1972 (AB 2284) "Only"	8,701	$1,797,634	$206
Bilingual Pilot Programs Chapter 1521/1971 (AB 116) "Only"	568	145,068	255
Miller-Unruh, Chapter 841/1972 AB 612 "Only" *	3,690	807,594	219
Educationally Disadvantaged Youth Chapter 1406/1972 (SB 90) "Only"	8,670	2,187,457	252
Early Childhood Education Chapter 1147/1972 (SB 1302) "Only"	10,319	2,223,617	215
Total State	31,858	$7,161,370	$224
FEDERAL FUNDING			
ESEA, Title VII	12,148	$6,188,561	$509
Elementary and Secondary Educ. Act (ESEA) Title I "Only"	12,972	4,166,196	323
ESEA, Title I (Migrant)	7,150	884,193	123
Emergency School Aid Act (ESAA) "Only"	4,842	3,065,293	633
Total Federal	37,012	$14,304,243	$386
COMBINED FUNDING			
English as a Second language, Title I, ESEA/EDY (SB 90), ECE, etc.	42,922	$15,115,369	$352
Bilingual Education: Combination of any of the above programs	21,252	8,364,000	393
Total Unduplicated Student Count	133,074	$44,945,001	$337

* This funding source provided $243,000 in 1974–75. The department notes that some districts also included funds from the Miller-Unruh Reading Specialist Program.

Yet, although Table VI shows some 133,074 NES and LES pupils receiving program services from these funding sources totaling $44.9 million at a $377 cost/pupil, only a total of 21,357 pupils can be identified as recipients of bilingual-bicultural program services, 9,209 from state and 12,148 from federal bilingual program funds. However, by regulation, at least one-third of these pupils in both bilingual programs must be monolingual English speakers, therefore, only approximately 14,102 are NES and LES pupils who definitely should be receiving bilingual instructional services. The other 154,431 NES and LES pupils may or may not be receiving bilingual instructional services. The fact that the Department of Education does not require that teachers possessing bilingual skills instruct LES pupils whose native language is other than English makes it unlikely that many of this number are receiving quality instructional services in a language they understand. Thus, presuming that a bilingual teacher is the core of a quality bilingual program, the lack of such a requirement would mean the lack of quality bilingual instruction because even if aides possess excellent bilingual and bicultural skills, the supervision of the second language of instruction would be impossible by a certificated monolingual English teacher responsible for classroom curriculum and instruction.

Other bilingual program services could be provided to LES pupils enrolled in the State's ECE program enacted as Chapter 1147, Statutes of 1972. The Legislature required that 50% of the amount allowed any year shall be designated for "those districts with the largest number of pupils with educational need."[22] The Policies for Early Childhood Education, issued January, 1974 by the State Department of Education, specified that by the end of the third grade, through individualized instruction, ECE intends to give all pupils "sufficient command of the basic skills in reading, language, and mathematics so they can succeed in their future schooling and life."[23] These policies also provided: "there should be staff members who speak the language of those pupils...when the Early Childhood Education Program includes pupils whose first language is not English."[24] The policies also define "greatest educational need to be an eligibility priority of the pupils and include those who qualify under the terms of Senate Bill 90 relative to 'Potential Impact of Bilingual Bicultural Pupils,' 'Index of Family Poverty,' and 'Index of Pupil Transiency.'"[25] Thus, these policies would indicate the probability that ECE programs in self-contained classrooms enrolling a majority of LES pupils would provide bilingual instruction. However, the fact that no state level requirement mandates that LES pupils receive services from bilingual teachers, except in AB 2284 programs, minimizes the chance that pupils served in these programs receive bilingual instruction.

American Indian Programs

American Indians numbered 200,000 and occupied 20% of the State of California in 1848 when the Treaty of Guadalupe-Hildalgo was signed. The population stood at only 20,000 in 1900, but a statistical survey compiled through Palomar College in 1975 shows that the American Indian population of California now stands at 239,000, the largest of any state.[26] The State

Department of Education reported in its 1974 "Racial and Ethnic Survey" that 30,344 American Indian pupils are enrolled in approximately 500 K-12 school districts. However, the latest statistics available from the Indian Education Unit result from the 1976 statewide school district census and show 51,200 K-12 American Indian pupils to be enrolled. These American Indians have had two federal and two state programs available specifically for their educational needs.

Federal American Indian Programs

American Indians are eligible for educational services under two congressional programs: (1) Johnson O'Malley Act of 1934, as amended in 1936 by Public Law 74-638 and by Title II of the 1975 "Indian Self Determination and Education Assistance Act" (P.L. 93-638); and (2) the "Indian Education Act" of 1972, Title IV, Parts A, B, and C.

The purpose of the Johnson O'Malley program is "to meet the specialized and unique educational needs of eligible Indian students," namely, those who are at least one-quarter degree Indian and who are members of a federally recognized tribe. Until 1975 only school districts could contract with the Bureau of Indian Affairs (BIA) to administer these funds, but the "Indian Self-Determination and Education Assistance Act" of 1975 has broadened eligible agency to "any state, school district, tribal organization or Indian corporation."[27] The program funds are appropriated to the Department of Interior to be administered through the BIA.

The regulations require that Education Committees, composed of parents, be established, conduct a needs assessment of the pupils and prepare the goals to meet these needs.[28] Under these federal regulations, American Indian Education Committees set program policy even if these programs are administered through public schools.[29] BIA records show that the first two program goals are cultural maintenance and home language development. Four such programs are funded currently in California. The Plumas County Indians, Inc. have contracted with the BIA since 1971 for a bilingual-bicultural program in the Maidu family language group. Two other such programs in the Pomo and Wintu language groups have been under contract with Round Valley Unified and Reservation School Districts since 1972. Mountain Empire Unified contracted to offer such a program in the Deigeuno family language group in 1974. Table VII shows the Johnson O'Malley program funding in California since 1969.[30]

TABLE VII

Johnson O'Malley Program Funding
1969-1976

	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77
Funds	$35,000	$130,000	$189,000	$350,900	$338,768	$356,630	$394,000	$1.6 M
No. of School District Projects	8	10	18	18	15	14	14	

The purpose of the Indian Education Act is to design programs which meet the special educational needs of the Indian children and includes bilingual language instruction as one of the "supportive services." School districts receive a grant based on the number of American Indian pupils who are at least one-sixteenth Indian and who are members of a federally recognized tribe.[31] Each school district must report the number of American Indian pupils enrolled to the State Department of Education. The Department must report this count by November 30 of any fiscal year to HEW if the school district is to qualify for the federal allowance per identified American Indian pupil.[32] Federal law requires that these federal funds supplement not supplant school district resources available to American Indian pupils and that the activities paid for by these funds meet the "special educational needs of Indian children."

Table VIII shows the Title IV, Part A funds subvented to California school districts.[33]

TABLE VIII

Title IV, Part A Funds, 1972-1976

	First FY 1973-74	Second FY 1974-75	Third FY 1975-76	Fourth FY 1976-77
Title IV Part A Subvention	107,715	1,223,000	2,228,000	4 M
Total American Indian Pupils Funded	15,417	18,250	30,854	37,031
Allowance per American Indian Pupil	85	115	72	108
Total American Indian Pupils Reported By School Districts	NA	NA	NA	51,200
Percent of Districts Reporting	NA	NA	19.9%	16.5%

California also receives Title IV, Parts B and C program funds. The 1975 Part B subvention provided an additional $1 million for Special Projects designed to improve the educational opportunities for Indian communities. These projects can be conducted by public or private agencies and numbered thirteen projects. The 1975 Part C subvention funded four projects providing special Indian adult education for an additional $194,000.

State American Indian Programs

Two state programs have been available to serve California American Indian pupil needs. The first authorized "not more than 10 Indian pilot projects in the rural public schools" for three years and was carried by Senator Randolph Collier, of the First Senatorial District. SB 1258, Chapter 1052, appropriated $1.5 million for what came to be called "Indian Early Childhood Education," but then Governor Reagan "blue penciled" the amount to $500,000 and subjected the final two years to the yearly budget review and appropriation process. The second is SB 2264, Chapter 1425, authored by former Senator Moscone, which established "10 California Indian education centers...to strengthen the instructional program in the public schools." The legislation appropriated $400,000 for the 1974-75 fiscal year and provided that the amount "shall be reduced by any amounts made available by the federal government for the purpose of this act."[34]

The Indian Early Childhood Education legislation required no needs assessment, but only "a listing of the goals and objective to be achieved." Although school districts receiving these funds were required to "establish a district-wide Indian Advisory Committee for Indian education," and each participating school had to establish "an Indian parent advisory group," the committee function was limited to "provide advice and suggestions on all parts of the program." The legislation did not contain any bilingual or bicultural requirements. Table IX describes the program.[35]

TABLE IX

Indian Early Childhood Education Program

	1972-73	1973-74	1974-75	1975-76
Appropriation Available	$100,000	$400,000	$260,590	X
No. of Projects	10	10	10	X
No. of School Sites	21	21	NA	X
No. of American Indian Pupils	749	749	820	X

The model for the Indian Education Center legislation was a successful community organized and administered program serving Indian children and adult needs on the Piute-Shosone Indian Reservation. Ten agencies and eleven programs were funded for the 1975-76 program year. All the programs funded made Indian culture a principal element and two contained provisions for bilingual elements.

State and Local Decisions on Bilingual-Bicultural Programs

The federal law and regulations specify that federal support of bilingual-bicultural programs has only a "capacity building" function to supplement "the historic State and local responsibility for funding and administering this country's education system."[36] DHEW further specifies that the policy decision of whether or not cultural pluralism is to be the effect of such programs "is a private matter of local choice." Furthermore, the federal requirements for district and school level advisory committees is to ensure that these programs serve the intended pupil population and that the content of these programs be the subject of local choice. The federal regulations governing American Indian programs even give these committees a policy making role relative to local school districts in the choice of program content.

Two characteristics of both federal and state bilingual education programs work against the establishment of bilingual-bicultural programs. Public Law 93-380, the Title VII Bilingual Education Act, and AB 2284, the Bilingual Education Act of 1972, specifically state that the goal of the bilingual education program is to develop in each LES pupil fluency in English so that the pupil may be "mainstreamed" in the regular program. The present federal and state policy, therefore, views bilingual instruction as compensating for a lack of English skills. Thus, present bilingual education programs are in effect, transitional. Secondly, the present federal and state bilingual programs include the culture of the pupil whose native language is other than English only "to provide positive reinforcement of the self-image of participating pupils."[37] The Congressional Conference Report on Public Law 93-380 specified that the purpose of the Title VII program is not to establish a bicultural society because the cultural maintenance of the primary, non-English language pupil is specified to be a state and local choice. Consequently, the "compensatory" and the "reinforcement" characteristics adversely affect the implementation of full bilingual education programs wherein a second culture and language are developed and maintained. The DHEW memorandum, "Departmental Position on Bilingual Education," issued December 2, 1974, reinforces the Congressional intention but emphasizes that "the cultural pluralism of American society is one of its greatest assets."[38] The confusion as to what constitutes a bilingual program stems from the conflict between the goals of these programs and the bilingual instructional means employed.

A brief description of the different philosophies of bilingual education, their debate and legal history in the United States and California will clarify this confusion. Chapter 2 is entitled "Legal and Philosophical Aspects of Bilingual-Bicultural Education Programs."

CHAPTER 2

LEGAL AND PHILOSOPHICAL ASPECTS OF BILINGUAL-BICULTURAL EDUCATION PROGRAMS

The question as to whether or not bilingual education programs are to be offered in public schools for pupils whose primary language is other than English has two parts. One part pertains directly to the court decisions culminating in the 1974 Lau v. Nichols decision. A second part, however, is broader and relates to a political climate and to state and federal court decisions culminating in the following Supreme Court decisions: Quick Bear v. Leupp (210 U.S. 50); Meyer v. Nebraska (262 U.S. 390); and Governor of Hawaii v. Tokushige (273 U.S. 284,298). The tension between the constitutional principle of equality of opportunity and a political principle of one nation through one language underlie both parts.

The Political Question of Ethnic Identity vs. Assimilation

This second and broader question comes down to a political question of ethnic assimilation in the Anglo-Saxon image versus ethnic pluralism in the multinational image. In 1782, the French political writer, Crèvecoeur, asked whether or not America might not be thought of as a new political pot in which the stocks and folkways of the many Europeans were melted together by the fire of a new spirit in this new land and develop into a new people?[39] The ideal offered for this new people was the Anglo-Saxon as typified by the "English" language. However, this ideal omitted two indigenous peoples, the Native Americans and the Mexicans of the Southwest and West, and excluded a third, the Africans, brought to work on plantations in the Colonies.[40]

California's second Superintendent of Public Instruction, Paul K. Hubbs, was an example of this political policy when he praised the "great Caucasian race of man" in his Sixth Annual Report of the Superintendent of Public Instruction, to the eighth session of the California State Legislature on December 31, 1856.[41] He traced "the past history of the language that now moves the machinery of our government and ennunciates her progress in scientific research" and then followed the "race that has towered over all other races in the science of government, in psychological knowledge, and in the arts" to the "faderland of our race."[42] This "faderland of our race" was the North European countries which produced the "Anglo-Saxons" who, according to Hubbs, founded the "Grecian and the Roman republic...and finally gave to us through our Pilgram Fathers and the settlers in the South, the Anglo-Saxon language, now modified into modern English language."[43] Hubbs' address established the "English only" policy of public school instruction in California public schools.

Andrew J. Moulder, the State's third Superintendent of Public Instruction reinforced this political policy by emphasizing that "our public schools were clearly intended for white children alone." He then recommended that the eleventh session of the California State Legislature withdraw state funds for education from "any District that permits the admission of the children of the inferior races - African, Mongolian, or Indian - into the Common Schools."[44] The eleventh session of the State Legislature subsequently authorized "marshals selected and designated by the Trustees" to "take a specific census of all the white children within their respective precincts" in the "month of October, annually."[45] In addition, the Legislature disallowed "Negroes, Mongolians, and Indians" from being admitted "into the public schools" and authorized the Superintendent to withhold from the district which did admit them "all share of the State School Fund."[46]

The Legal Right to Bilingual-Bicultural Education

A first instance of this Caucasian primacy appeared in the federal Appropriation Act of 1971 and was directed against what was termed the "barbarous community" of Native Americans. The Quick Bear v. Leupp decision was the result of the attempt by F.E. Leupp, Commissioner of Indian Affairs, and Jesse E. Wilson, Acting Secretary of the interior, to implement this Act. President Grant sponsored this federal Act in order to "breathe the atmosphere of a civilized, instead of a barbarous ...community" into the Native American children.[47] The Act established off-reservation boarding schools and by 1886 no Indian student whose tuition and maintenance was paid for by the U.S. Government studied a language other than English or customs other than the Anglo-Saxon. In spite of the Act, Indians continued to use the "Trust" and "Treaty Fund" monies to obtain bilingual-bicultural education programs in reservation schools through the Bureau of Catholic Indian Missions.

Leupp went to court to stop these educational programs and argued that the use of these monies was a violation of the Constitutional provision that the government be "undenominational." The Supreme Court decided that these monies were the property of the Native Americans and under their fifth Amendments rights, they could use them to educate their children in schools of their own choice."[48]

A second instance which sought to "Americanize foreigners" was the Meyer v. Nebraska decision. This 1923 decision was a result of regressive statutory restrictions placed on the bilingual instruction of German immigrant pupils attending both public and private parochial schools in Ohio and surrounding states.

Bilingual instruction in German and English in the United States' elementary schools dated from 1694 near Philadelphia, Pennsylvania. Bilingual programs spread from Pennsylvania to New York, Virginia, Ohio, Michigan, Indiana, Illinois, Wisconsin, Missouri and Minnesota and grew to the point where some 9 million German citizens spoke and were taught in German and/or English by 1910. "No other non-English language has been spoken by as large a proportion of residents of the United States at any one time in American history," writes Heinz Kloss.[49] German bilingual public school systems were established in Cincinnati (1840), Baltimore (1872), and Indianapolis (1882). Laws in Wisconsin (1854), Illinois (1857), Iowa (1861), Kansas (1867), Minnesota (1867), Oregon (1872), Colorado (1887) and Nebraska (1913) left the decision on what kind of school programs would be offered pupils to local groups. These groups were identified in some states as "75 freeholders"; in others, as the parents of 25 or 50 pupils, a majority of school districts' voters or the school board.[50]

Illinois' Edwards Law (1889) and Wisconsin's Bennett Law (1889) were the first instances of state legislatures intervening in the local decision about what the languages of instruction in private schools would be; state legislatures soon would decide the same in public schools.[51] The Edwards and Bennett laws required that English be the sole language of instruction for most subjects in non-public schools.[52]

Other states including Nebraska followed suit. Three principal motives sparked these efforts: first, the anti-Kaiser and secondly, the anti-Catholic sentiments growing within the United States. Finally, the threat of the so-called "Yellow Peril" rallied proponents of America as "white man's country" to the "English only" cause.[53] These were linked to a developing American "nativism" and a view that Germans and Japanese were potential agents of foreign, subversive powers seeking to take over the United States government. These efforts were spearheaded by the Know Nothing Party and the American Protective Association and rationalized by the contention that "Americans speak English."[54] This contention carried over into the realm of voting and both these groups also urged the passage of laws requiring English literacy tests as a prerequisite for voting. In California, a member of the American Party, Republican Assemblyman A. J. Bledsoe, lobbied to amend out the bilingual provision placed in the California Constitution as a result of negotiations following the approval of the Treaty of Guadalupe-Hidalgo. Bledsoe led the 1893 effort which amended the Constitution to require English literacy as a condition for exercising voting rights.[55]

The first case contesting the "English only" method of instruction was brought by a teacher in Nebraska. The teacher had been found guilty of teaching German to a ten year old child in a parochial school and his conviction was upheld by the Nebraska Supreme Court with the argument that "the statute (forbidding instruction in any language but the English language) forwards the work of Americanization."[56] Justice McReynolds delivered the decision and found that the conviction of the teachers and the prohibition of teaching the modern languages of German, French, Spanish and Italian constituted a violation of the fourteenth amendment of the U.S. Constitution. "Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge and with the power of parents to control the education of their own," said Justice McReynolds.[57]

The Governor of Hawaii v. Tokushige decision was the result of Asian citizen reaction to the Act of 1920 restricting foreign language school instruction in the Territory of Hawaii. The Act was based on a Survey Commission report arguing against the foreign-language schools because of the adverse effects of bilingual instruction on: (1) the health of the children; (2) progress in public schools; and (3) loyalty to America because the instruction encouraged the retention of Japanese culture, ritual and religious devotion to the Emperor. The fact was that only 900 out of 36,000 pupils attending the public schools spoke English as their native language.

The Asian community took the Governor to court. The district court sided with the plaintiffs and granted a preliminary injunction against the enforcement of the Act on the grounds that it would violate the fifth and fourteenth amendment rights of the plaintiffs. The Governor appealed the decision to the U. S. Supreme Court. Again, Justice McReynolds delivered the decision and upheld the district court's opinion stating that "enforcement of the

Act...would deprive parents of fair opportunity to procure for their children instruction which they think important."[58] He continued: "The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another language."[59]

The net effect of these court decisions affirming the Native Americans' rights to use their tribal monies to educate their children and the fourteenth amendment rights of parents to educate their children is to make bilingual-bicultural education legally permissive for parents in the private school area. But, even though the rights of children and parents to obtain bilingual instruction in private schools prevailed because of these Supreme Court decisions, state legislatures continued to pursue the political policy of one people through one language and to require that English be the basic language of instruction usually in private as well as public schools. Nineteen states enacted such legislation during the period of World War I.[60]

The Legal Right to Equal Educational Opportunity

These Supreme Court decisions applied to private schools until a group of Chinese parents in San Francisco took a California public school district to court in 1972. This case was decided by the Supreme Court in the 1974 Lau v. Nichols decision. This decision differs from the foregoing decisions in two respects. (1) It responds to plaintiffs whose children attend public schools; and (2) it sides with the plaintiffs by stating that rights protected by Title VI of the Civil Rights Act of 1964 had been violated, but, contrary to the earlier decisions, does not conclude to the alleged violation of the fourteenth amendment.[61] The Lau decision was unanimous and finds that there "is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."[62] The court remanded the case to the district court "for the fashioning of appropriate relief" to rectify the language deficiency in order to open the instruction to students who have a deficiency in English language skills.

In remanding the case to the district court, Justice Douglas pointed out that the very Education Code section which required the mastery of English as the goal of public school instruction also authorized bilingual instruction as an alternative. In addition, the court cited the school district for its "laissez faire attitude" and failure "to act in the face of changing social and linguistic patterns."

Lau and Two Questions Concerning Bilingual Education

This Lau decision raises two basic questions. First, does the decision require "bilingual" education programs for LES pupils in school districts which the Office for Civil Rights (OCR) finds out of compliance with the Civil Rights Act? Secondly, do school districts which are in compliance with the Civil Rights Act have any specified "bilingual" program requirement in relation to such pupils enrolled in their schools?

The first question arises because the Supreme Court cites DHEW guidelines in requiring the district to "take affirmative steps to rectify the language deficiency in order to open its instructional program to these students," but did not specify remedies beyond the alternatives available in the California Education Code. The first question asks what the minimum program remedy required of a public school district is to conform with the Civil Rights Act?

The second question arises out of a need for a consistent public policy in relation to the kind of services pupils whose native language is other than English shall receive according to their individual talents and abilities. The second question asks what is the optimum program which the parents want and the district can afford?

Situations Complicating Solutions to the Questions

The answer to these questions is complicated by the following facts. (1) Historically, full bilingual-bicultural education was the reality both in the nation and in California for more years than "English only" instruction; Fishman points out that four of the seven colonial languages "have maintained uninterrupted continuity on American soil," namely, English, Spanish, French and German.[63] (2) The passage of the "English only" instruction laws and the rise of American "nativism" at the end of the Nineteenth and beginning of the Twentieth Centuries made bilingual education difficult to implement and unpatriotic to provide in spite of the Supreme Court decisions upholding the rights of parents to choose such programs. (3) "Spanish," Fishman observes, "continues to have the greatest number of speakers," particularly in the Southwest and West because of the Spanish colonial empire and of the immigration from Hispanic countries such as Cuba, Puerto Rico, Mexico and Central and South America.[64] In addition, the immigration of Asians to the West predates California's statehood.[65] The continued immigration of Asians and Hispanic peoples after World War II and after the political upheavals in Cuba required some kind of instructional program for the pupils whose native language was other than English. The Lau decision addresses this historic and demographic situation when the court agrees that the school district in question "failed to act in the face of changing social and linguistic patterns." (4) The original federal Bilingual Education Act defined bilingual education as "the use of two languages, one of which is English, as mediums of instruction," and the original Title VII guidelines permitted the use of English-as-a-Second-Language (ESL) instructional method. The purpose of this method of instruction, however, is to teach LES pupils English, not their native language or culture, and therefore, does not require that teachers be bilingual. Thus, the United States Comptroller's "Report to Congress" laments the lack of instruction in the LES pupil's native language occuring in Title VII programs and regrets the inclusion of ESL in the Title VII guidelines.[66] This method and purpose, coupled with the successes of second-language instruction in U.S. Army language schools, resulted in the use of ESL instruction by many Title VII programs. Since, however

English-speaking ability is only one element in a full bilingual program where the goal is dual language maintenance coupled with the cultural component of the pupil's native language, confusion exists as to the meaning and purpose of bilingual education. The end of English-speaking skill has narrowed the choice of the means whereby the LES pupils is to be instructed.

Two things offer some direction in clarifying the confusion: (1) court decisions subsequent to Lau v. Nichols; and (2) the "Lau Remedies." The major court decisions after Lau at this time are: Serna v. Portales Municipal Schools; Aspira of New York, Inc. v. Board of Education City of New York; and Keyes v. School District No. 1, Denver, Colorado.[68]

Later Court Decisions
Clarifying Solutions to the Questions

The circuit court in the Serna case interpreted the language of the Lau decision in finding for the plaintiffs. This case discusses three areas: (1) what constitutes an acceptable remedy; (2) who can provide the remedy; and (3) when the remedy is required. The court holds that bilingual instruction is the remedy in saying: "A student who does not understand the English language and is not provided with bilingual instruction is therefore effectively precluded from any meaningful education."[69] Grant observes that "this is the first instance of a court expressly requiring bilingual instruction as such."[70]

This circuit court upheld its right to specify the kind of instruction required by saying:

> '(Once) a right and a violation have been shown, the scope of the district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.' Under Title VI of the Civil Rights Act of 1964 appealees have a right to bilingual education.[71]

The court added, however, that such a Title VI violation exists "only when a substantial group is being deprived of a meaningful education."

The Aspira case also considered those eligible to receive bilingual instruction. The court ruled that all Hispanic students should be given a test to determine their proficiency in the use of the English language. Students scoring above the twentieth percentile (20%) in English were presumed competent and would not need special bilingual instruction. Those falling below, however, would receive the special instruction, but only if their Spanish exceeded their English language ability.

Keyes was a desegration case, but its significance lies in the fact that a bilingual program was part of the plan. The court praised and approved the bilingual program component and is, thus, the first case so far wherein pupils whose native language is other than English must receive instruction in their native language in other subjects, until they can compete effectively in English.

Bilingual Education as an Equal Educational Right

William E. Johnson discusses these court cases in the context of other cases and concludes that two arguments require that an LES pupil has a right to bilingual education.[72] The first argument is predicated on the basis of "equal access"; the second on the basis of "equal outcome." The "equal access" argument is used in the Lau decision by stating that equal educational opportunity is a function of the language of the pupil and not just the physical aspects of the same classrooms, curriculum and teachers. Equal educational opportunity means that the pupil must be provided the skills in the basic language of instruction through a language the pupil understands. The "equal outcome" argument would include such obvious things as the presumed literacy of a high school pupil upon reception of a high school diploma. This argument is harder to substantiate, but some parents have sued school districts for their children's lack of literacy after having been awarded a high school diploma.

Current California Civil Actions Requiring Answers to the Questions

Three California civil actions are before the courts which underscore the necessity to clarify whether and what kind of bilingual services are required and who has the responsibility to require that these services are provided. Flores v. El Centro School District, Riles et al, filed February 20, 1976, (No. C138811), alleges that the defendents have denied plaintiffs equal educational opportunity for an alleged failure to implement a bilingual education program for pupils with limited-English-speaking skills. In addition, the action alleges that defendent Riles denied plaintiffs an equal educational opportunity and requests the state defendents to reduce or terminate program funding to ensure correction of that alleged inequity. Both Lopez v. Mathews, Riles et al,[73] and Chaney v. California State Department of Education[74] raise the issue of the scope of duties required of the Superintendent of Public Instruction in relation to Title I and the State Board of Education and the Superintendent of Public Instruction in the event violations of law are established under a variety of federal and state laws and regulations.

The Lau Remedies and DHEW Memoranda Clarifying Answers to the Questions

These court cases make it all the more important to determine the place of the "Lau Remedies" in providing Lau-type pupils with an equal educational opportunity because these "Remedies" allow three program options on both the elementary and intermediate and the secondary school levels. The "Remedies" permit a school district found in noncompliance with the Civil Rights Act to provide LES or NES pupils: (1) a Transitional Bilingual Education Program (TBE); (2) a Bilingual-Bicultural Education Program (BBE) and/or (3) a Multilingual-Multicultural Education Program (MME). ESL "is not appropriate," state the "Remedies" because it "does not consider the affective nor cognitive development of students in this category."[75] The "Remedies" define bilingual-bicultural education to be "a program which utilizes the student's native language (example: Navajo) and cultural factors in instructing, maintaining and further developing all the necessary skills in the second language and culture (example: English)."[76] The "Remedies" define the transitional program in the same manner but specify that "once a student is fully functional in the second language (English), further instruction in the native language is no longer required."[77]

A memorandum entitled "Departmental Position on Bilingual Education," dated December 2, 1974 and signed by Frank Carlucci, Under Secretary to DHEW, clarifies the place of the "Lau Remedies" and locates the responsibility for determining what kind of and how bilingual-bicultural education programs are to be implemented "to provide equal educational opportunities to these limited- or non-English-speaking students."[78] An additional memorandum from DHEW accompanied the "Lau Remedies" and clarifies their place in implementing the Supreme Court's mandate. Finally, the concurrent, but separate opinion of Chief Justice Berger and Justices Stewart and Blackman offers additional clarification.

DHEW's "Departmental Position on Bilingual Education" states the: (1) effect and goal of the Lau v. Nichols decision; (2) federal responsibility pursuant to the Civil Rights Act; (3) federal responsibility in promoting bilingual education; (4) federal distinction between the goal and means of bilingual education; and (5) state and local responsibility and choice in relation to bilingual education.

The memorandum specifies that the court decision "in its simplest terms" mandated school districts to comply with Title VI of the 1964 Civil Rights Act, and DHEW regulations and guidelines in order to "rectify the language deficiencies of children of limited- or non-English-speaking ability."

The memorandum further states that the "goal of such programs is to provide an educational opportunity" for these pupils equal to the "educational opportunities provided to all other students by the school system."

The memorandum clarifies that the "federal responsibility is to ensure under Title VI, that such programs are developed and implemented." In addition, the memorandum observes that "the administration and Congress have assumed a Federal capacity building role" and this role includes activities such as research, testing, information dissemination, techniques for teaching special education students, curriculum development, teacher training and technical assistance to state and local educational agencies.

Finally, the memorandum observes that "a frequent misunderstanding" results by not distinguishing "the goals of bilingual-bicultural programs from the means of achieving them." Public Law 93-380 is cited as specifying that "the ultimate goal of federal bilingual education programs is 'to demonstrate effective ways of providing, for children of limited-English-speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language.'" Thus, the ultimate goal of bilingual-bicultural programs specified by the Federal Congress and Administration is the demonstration of effective teaching methods which will enable pupils whose native language is other than English to achieve competence in English. The "primary means" which the Federal Congress and the Administration have specified are "the use of such child's language and cultural heritage." The federal legislation also specifies "the fullest utilization of multiple language and cultural resources." The memorandum emphasizes, however, that this "capacity building" role of the Office of Education must be kept separate from the enforcement responsibilities of the Office for Civil Rights. Furthermore, although the current state of the art does not allow DHEW to specify the exact nature of appropriate programs to Lau-type children, DHEW states that "equal access to the educational opportunities...--particularly for young children--with a strong bilingual-bicultural component would seem to be preferable both from an educational effectiveness and equal educational opportunity standpoint."

Carlucci cites the Conference Report on HR 69 as showing that Congress did not want the new definition of bilingual education to "be misinterpreted to indicate that an ultimate goal of the program is the establishment of a 'bilingual society.'" He goes on to state that "the cultural pluralism of American society is one of its greatest assets, but such pluralism is a matter of local choice, and not a proper responsibility of the federal government."

Thus, the federal role is to facilitate the development of bilingual-bicultural programs so that pupils whose native language is other than English and who are limited-English-speaking can learn English. However, whether or not these programs will be continued beyond these goals of English competence and/or compliance with the Civil Rights Act is a state or local option and requires a state or local decision. The fact that the maintenance of bilingual-bicultural educational programs is a local option is a point that the three prior Supreme Court decisions made when speaking of the private school option of parents.

The Responsibility of the Chief State School Officer in Relation to Limited-English-Speaking Pupils

This DHEW position memorandum highlights a question raised in all three of the plaintiff cases pending before California's district courts. What is the minimum responsibility of the State Superintendent of Public Instruction in monitoring the kind of services being provided to LES pupils and in determining and enforcing an appropriate level of services in keeping with federal and state law and regulations? One program which would be affected by the answer to this question is Title I ESEA. The Chief State School Officer signs an assurance, witnessed by the State Attorney General's Office, and "signed-off" by the Governor's Office. The Superintendent assures that the Civil Rights Act, including the regulations and guidelines interpreting it, will be enforced as a condition of receiving federal funds for education pursuant to P.L. 93-380.[79]

This assurance assumes three basic activities. First, the assurance includes a monitoring activity to determine whether or not LES pupils are provided access to equal educational opportunity, pursuant to the appropriate federal laws and regulations, including those pertaining to the Civil Rights Act. Secondly, the assurance would include the responsibility to determine the minimum instructional program necessary to provide equal access as a standard of measure. The DHEW standard is the "Lau Remedies." The State Board of Education's standard would be the "Policy Statement." Thirdly, if a given school district were found to be in non-compliance with the Civil Rights Act or its implementing regulations, then the assurance suggests the responsibility of the Superintendent to require the school district to implement such a program, as a condition of receiving the funds over which the State Department of Education has administrative control.

Assemblyman Peter R. Chacon, Chairman of the Special Subcommittee on Bilingual-Bicultural Education, requested a State Attorney General's opinion on the nature and effect of the State Superintendent's responsibility to provide for the equal educational opportunity of LES pupils according to these federal provisions on January 16, 1976. But, in a letter dated June 9, 1976, Elizabeth Plamer, Chief Assistant Attorney General, notified Assemblyman Chacon that to reply to the questions posed, "it would be necessary to construe the matters in issue..." and since "this office represents defendants...it is a long established policy of this office not to respond to opinion requests that raise issues currently before the courts."

The "Memorandum for Chief State School Officers" clarifies the place of the "Lau Remedies" which accompanied it and enlists the cooperation of the state agency "in securing necessary corrective action" when such is required. The memorandum observes that the Supreme Court in Lau v. Nichols "expressly upheld the Department regulations (as interpreted by this policy statement) prohibiting educational practices by which 'students who do not understand English are effectively foreclosed from any meaningful education.'" This memorandum states that the "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under *Lau* v. *Nichols*" are "those educational approaches which would constitute appropriate 'affirmative steps' to be taken by a non-complying school district 'to open its instructional program' to students foreclosed currently from effective participation therein."

This DHEW policy memorandum, therefore, includes the "*Lau* Remedies" in the same category of guidelines and regulations which the Supreme Court justices concluded have the "validity of a regulation promulgated under the general authorization provisions of paragraph 602 of Title VI." Thus, although DHEW permits school districts to submit two kinds of "voluntary plans" remedying this non-compliance with the Civil Rights Act, it requires districts which submit a plan different from the "*Lau* Remedies" to "demonstrate affirmatively, at the time of submission, that such plans, at a minimum will be equally effective in ensuring equal educational opportunity."

The State Board of Education "Policy" Statement

The State Board of Education adopted a "Policy on Services to Limited-English-Speaking Students" which incorporates some of the "Lau Remedies." In a formal opinion, Evelle J. Younger, State Attorney General, stated that "the failure to take steps of the type outlined in the 'Policy Statement' might well make the Department and local school districts vulnerable to further attacks on the order of those made in Lau v. Nichols."

The State and Local Responsibility for "Fashioning of Appropriate Relief"

The Lau v. Nichols decision and the DHEW "Policy on Bilingual Education" remand the ultimate decision on providing remedies to the local and state agencies. The "Lau Remedies" and the State Board of Education "Policy Statement" offer a wide range of bilingual program types. The "Lau Remedies," however, are more specific than the State Board's "Policy Statement" in three important respects. First, the "Lau Remedies" define the transitional bilingual program in the same manner as the bilingual-bicultural program, but the Board's "Policy Statement" omits the bicultural requirement. Secondly, the "Lau Remedies" specify the bilingual-bicultural, transitional bilingual and/or the multilingual-multicultural program options to be appropriate at the elementary and intermediate levels, but exclude ESL as an appropriate program remedy. Thirdly, the "Remedies" require that the pupil needs assessment "be made by persons who can speak and understand the necessary language(s)" and that the "district must submit a plan for securing the number of qualified teachers necessary to fully implement the instructional program."[81] The Board's "Policy Statement" is silent on both these issues. The Board's "Policy Statement" does not specify the bilingual-bicultural program remedies for elementary and intermediate levels and thus, by implication, permits an ESL remedy on both these levels. Thus, the answer to the first question on what kinds of program remedies are required for school districts found out of compliance with the Civil Rights Act is not subject to one answer because of the "policy" differences on the federal DHEW and the State Board of Education levels.

The Philosophical Question Concerning the Optimum Bilingual Program

The second question deals with the kind of program a state or local agency would recommend for students whose language is other than English, but who can function effectively in English. Again, the federal DHEW position is that whether or not a school district offers such pupils bilingual instructional services is a local decision, unless, of course, state law required otherwise. At this time, California State law only requires that fluent bilingual teachers instruct pupils enrolled in bilingual programs funded through the "Bilingual Education Act of 1972." However, under the current Ryan Act legislation, no classroom instruction is legal unless it is performed by certificated personnel. Thus, wherever and whenever non-certificated personnel are instructing LES pupils such instruction is illegal. Therefore, even if state law gave local school districts the option of providing bilingual-bicultural programs to serve the needs of LES pupils, present state law would require that personnel with certified bilingual skills staff such programs.

The ultimate resolution to the question of whether or not school districts found out of compliance with the Civil Rights Act, or indeed, any other schools, will offer bilingual-bicultural or multilingual-multicultural second language maintenance programs to students whose native language is other than English must be decided at the state or at the local level. Ultimately, this is not a program, but a political decision. The past and current evaluation on bilingual-bicultural education programs offers overwhelming evidence as to pupil and community preference for bilingual-bicultural maintenance programs. This evidence will be presented as part of Chapter 3, "Synopsis of Testimony Presented to the Special Subcommittee."

CHAPTER 3

SYNOPSIS OF TESTIMONY PRESENTED TO THE SPECIAL SUBCOMMITTEE

> It is important that we remember that the bilingual-bicultural programs of instruction for the thousands of limited-English-speaking pupils in this State are not a first chance, not a second chance, but the only chance.[82]

The testimony given before the Special Subcommittee on Bilingual-Bicultural Education focused on three areas: (1) Program, (2) Evaluation and (3) Funding. Testimony within these three areas concentrated on four concerns: (a) the State Department of Education; (b) program goals; (c) the need for coordination of federal, state and local programs; and (d) the qualifications of instructional personnel.

1. Bilingual Program Area

A common complaint of witnesses was the lack of commitment to bilingual education on the part of state and local administrators. Exceptions were noted, but administrative support was not felt to be the rule. This lack of general administrative support was attributed to three basic causes: (1) lack of a clear state-level bilingual education policy; (2) a lack of personnel who are committed to the promotion of cultural pluralism; and (3) administrators who appear to believe in bilingual education, but who then "gear it for failure by not supporting it with the proper staff and funding."[83]

The Lack of Clear State-Level Policy

Witnesses repeated the same three examples to illustrate this lack of state-level policy. First, they spoke of the lack of administrative direction. Title 5 regulations required to implement the Bilingual Education Act of 1972 were not adopted by the State Board of Education until April of 1975, two years and three months after the Act became law. Secondly, they complained that the State Department of Education had insufficient staff with bilingual and bicultural skills either in the Office of Bilingual-Bicultural Education or in the Elementary and Secondary Field Services Teams serving some 1,100 school districts which enroll an estimated 250,000 LES pupils whose native language is other than English.[84] The Departmental spokesperson did not know how many of the field services personnel had bilingual-bicultural skills, but stated that although the Office of Bilingual-Bicultural Education only had four bilingual staffpersons available to monitor districts, four more were being hired.[85]

American Indian witnesses pointed out that California has the largest identified Indian population of any state, yet, it employs only two Indian consultants in the Indian Education Unit. It has the fewest of all the thirteen states which have Indian Units within their State Departments of Education. Oklahoma and Alaska have twenty-four, Arizona 8, Colorado 5, New Mexico 8, Montana 4, and so forth.[86] California received $2.1 million in Title IV, Part A, Indian Education Act funds in fiscal year 1975-76. However, because of this staff limitation, data was collected only from 115 school districts, although an additional 52 districts were eligible to receive funds.[87] Thirdly, witnesses stated that complaints to the Department of Education about inadequate NES and LES assessment procedures, funding, program, parent participation and staffing in some district programs received no action.[88] The lack of State Department monitoring of these programs serving NES and LES pupils and the lack of enforcement of some laws and regulations was interpreted by many as a lack of support in providing bilingual-bicultural services.[89]

The example given which raises a question about local commitment was the lack of local districts which have phased bilingual programs supported by federal or state categorical funds into local programs supported by regular district a.d.a. funds.[90] Both federal Title VII and State AB 2284 Bilingual Education Acts provide for such a phase-in. Many noted that this lack of local commitment also was evident in the fact few local boards of education have adopted bilingual-bicultural policy statements.[91]

(a) The State Department of Education and Bilingual Programs

The Legislative Analyst's and the Department of Finance's testimony criticized the Department of Education's management of bilingual programs. The Analyst's criticism cited lack of coordination stating that "no single unit within the Department of Education is responsible for directing or even monitoring all of the existing programs."[92] The Analyst also cited "lack of regulations, inadequate evaluation lack of basic information on students served and the 56% monolingual English students enrolled in AB 2284 programs." In addition, the Analyst reported the "considerable controversy over the most appropriate method, ESL or bilingual-bicultural, to serve the needs of the limited-English-speaking students." The Analyst repeated these criticisms in the October 27, 1975 testimony before the Special Subcommittee on Bilingual-Bicultural

Education. The Department of Finance also testified that "the Department must tighten its existing program management process."[93]

School district field personnel testified to the confusion of instructions received from the Department and to the lack of answers to their questions.[94] Field administrators complained that they received program and funding information too late to be of use for effective planning.[95] Many objected to what they thought was a lack of assistance from the State Department of Education.[96]

(b) Bilingual Program Goals

The testimony pointed out the tension and confusion regarding the goals and means for bilingual education. Parents, aides, many teachers and some administrators argued that the historical heritage of the United States supports bilingual maintenance rather than transitional bilingual programs.[97] However, one school board president testified that bilingual education in any form was unpatriotic.[98] Most of those testifying used the term "bilingual education," but the meaning ran the spectrum from an English-as-a-Second-Language "pull-out" program to a bilingual-bicultural maintenance program.[99] Yet, those testifying did separate into two opposing groups:

one group held that bilingual instruction should be compensatory only until the pupil, whose native language was other than English, could be "mainstreamed" and "benefit from regular classroom instruction"; the second group held that bilingual instruction should be a maintenance program to preserve the cultural pluralism which is the United States' heritage.[100] Both groups agreed that bilingual programs should instruct LES pupils in English language communication skills.

(c) Need for Coordination of Federal, State and Local Programs

An overall complaint was the lack of coordination between bilingual programs serving the same LES pupils supported by different funding sources in the same school.[101] Examples given included enrollment of LES pupils in different schools of a district funded by Title I and AB 2284 or Title VII and AB 2284 funds. In the former case, the Title I pupils did not receive any bilingual instruction, but the AB 2284 pupils did. In the latter case, the Title VII pupils did not have a bilingual teacher, but the AB 2284 pupils did.

The Department of Education spokesperson reported that 13,074 LES pupils were served by categorical funding sources.[102] Subsequent testimony, however, indicated that this did not mean these pupils received bilingual instruction because the Department does not require that such pupils be taught by a bilingual teacher even if they are in a self-contained classroom. Many commented upon the difficulties caused by the different and sometimes conflicting guidelines and regulations between bilingual programs funded from different state or federal sources. AB 2284, for example, requires a fluent bilingual teacher after two years, but Title VII does not. Many others spoke of the need for planned coordination of all available funds to serve the needs of LES pupils whose native language is other than English.[103]

(d) The Qualifications of Bilingual Instructional Personnel

All those testifying agreed that a greater number of qualified bilingual personnel are necessary on the administrative and instructional levels.[104] Witnesses called for teacher training institutions to step up recruiting efforts to provide qualified bilingual staff and to enroll an increased number of students to achieve this.[105] Many testified that some districts were not hiring personnel with bilingual skills, but were shifting credentialed, monolingual English-speaking teachers into these programs to supervise bilingual aides.[106] Some called upon the Legislature to require districts to hire teachers with bilingual skills to serve the needs of such pupils and to require that administrators and directors of bilingual programs have bilingual skills.[107]

Witnesses called attention to Legislative Counsel and Attorney General opinions concerning the legality of the decision to retain personnel having bilingual-bicultural skills with lesser seniority, pursuant to Education Code, Section 13447. Both the Attorney General's and the Legislative Counsel's opinion concur that "the Legislature has found that bilingual-bicultural personnel employed for these programs... do possess special qualifications to be considered as a competency under Section 13447 which would authorize a district to terminate a senior employee without such competency."[108] In addition, Legislative Counsel, in a separate opinion, states that the hiring of staff for a bilingual education program, who have the bilingual skills and "who reflect the ethnic and racial diversity of the school district population in the bilingual education program could be consistent with Title VI provisions."[109]

Many parents, aides and teachers complained about the lack of appropriate pre- and in-service training programs. They called for programs which would upgrade the bilingual and bicultural skills of teachers and aides. The Department's in-service training for credit programs was criticizes as being uncoordinated and ineffective.[110] The in-service credit program was believed to be "uncoordinated" in that "extension" and other course offerings were not coordinated with teacher training programs and credits could not be counted as satisfying credential requirements. Coordination with the Commission for Teacher Preparation and Licensing career ladder guidelines was recommended. The in-service credit program was deemed "ineffective" where extension course credits were inadmissable as satisfying B.A. requirements or where these programs did nothing more than provide salary step increments or excuses for workshop travel.[111]

The State Universities and Colleges and the University of California teacher training programs were criticized both as to their admission policies and as to the few faculty having bilingual-bicultural skills teaching in the Departments and Schools of Education.[112]

Many complained that the "burden of bilingual education is borne by the aides" and that the payment they receive is not commensurate with the work they do.[113] Many aides and community college personnel testified as to the difficulties that the Governor's limitation on enrollment in community colleges has caused in gaining admission to career ladder programs leading to bilingual credentials in the four-year post-secondary institutions.[114]

(2) Evaluation of Bilingual Programs

A general and repeated criticism was the lack of valid and adequate evaluation data to assess the effectiveness of different kinds of bilingual programs. A Department spokesperson testified that standardized test instruments were not available to obtain the data required. Several teachers, administrators and one professional evaluator testified that any "standardized test" is "normed" according to a definite group and thus, no "standardized test" can be "standardized" for universal applicability.[115]

Expert testimony cited the favorable findings of research studies conducted in many bilingual-bicultural programs, including language "immersion" programs. Two kinds of these programs were discussed: "Partial French Immersion" (PFI) programs, in which instruction was conducted in one language in the morning and the other language in the afternoon session; and "Full French Immersion" (FFI), in which all instruction was in French throughout Kindergarten and Grade 1, with English Language Arts introduced in Grade 2 or 3, while instruction in English was increased until it becomes a PFI program.[116]

The results showed that by the end of Grades 1 PFI pupils were at par with their peers in the regular English program in English skills even though only half their instruction was in English. When arithmetic skills were tested in English, PFI pupils taught in French scored higher than regular school pupils taught in English. With respect to French, Grade 1 PFI pupils scored higher than pupils in regular Grade 1 who received daily periods of French-as-a-Second-Language instruction since Kindergarten, even though PFI pupils had only half their instruction in French for only one year. PFI pupils held these gains at the end of Grade 2, 3 and 4, so that PFI pupils scored at par with the regular school pupils instructed only in English in the areas of English, mathematical and cognitive skills. The PFI pupils also scored significantly better than the FFI pupils instructed only in English.

Witnesses noted that the studies on the St. Lambert, Culver City and other bilingual-bicultural program experiments were equally positive.[117] Documentation proves that providing entrance to a society whose principal language is other than the pupil's (such as English in the U.S., or French in Canada) by instructing the pupil in his/her native language (such as Spanish, Chinese, French) has significant beneficial effects upon the pupil's and parent's attitudes toward the dominant language and society. However, instructing them only in the dominant language through an ESL or FSL program has negative effects upon the pupil's and the parent's attitudes toward the dominant language and society.[118] The evaluations of the San Diego Spanish and San Francisco Chinese bilingual programs published in August of 1975 reported the same conclusions. The report on the San Francisco project even compared the reading scores of Chinese pupils in bilingual programs with those in ESL programs and noted that those in bilingual programs were one full grade year ahead of those in ESL programs, even though pupils enrolled in the latter had been living in the United States "substantially longer." A final conclusion of the San Diego project report stated: "the questions regarding economic feasibility, availability of trained staff, and political expediency are the prime determinants in whether or not to expand the program...it is not a question of can it be done and does it help children."[119]

Witnesses working in Special Education programs spoke of the need to provide bilingual programs to LES handicapped pupils who otherwise would be excluded from participation.[120]

(a) State Department of Education and Bilingual Evaluation

The State Department of Education's monitoring and evaluation of bilingual programs was criticized both as to the validity of the data and its usefulness. Local bilingual program field personnel criticized the Department's survey instruction forms and evaluation instructions as confusing and contradictory.[121]

(b) Bilingual Program Goals

Several local program and evaluation field personnel testified to the need of using criterion-referenced tests to assess the bilingual pupil's progress. Others stated that no evaluation process can be decided upon until the state and local agencies agree on the purpose and nature of bilingual education. If the program purpose is to provide pupils instruction in a language they understand until they can function in the regular school program where the basic language of instruction is English, then bilingual instruction is compensatory. In this case, ESL might be the only instruction that should be given the pupil whose native language is other than English. The success of such a program would be measured simply by the degree of the pupil's mastery of English, but would not guarantee that the pupil would be literate either in English or the primary language. In addition, ESL programs do not as such provide instruction in the pupil's native culture and thus can be counter-productive by inducing a negative self-image in the pupil. Witnesses stated that though ESL is one element within bilingual education, it is not bilingual education wherein the purpose is dual language and cultural development and maintenance.[122]

(c) The Need for Coordination of Bilingual Program Evaluation

Many testified regarding the success of bilingual immersion programs in Germany, Canada and California. They complained that data about these programs were not provided and useful evaluation data in general were not supplied. Many also complained that duplication of testing and evaluation was required in several different reporting forms, namely, ECE, Title I, Title VI and AB 2284, and that these multiple report requests should be coordinated and unified. These persons thought that the Education Management and Evaluation Commission should assume a coordination and information dissemination role for bilingual education and evaluation.

(d) Qualifications of Personnel Evaluating Bilingual Programs

Many who testified criticized the qualifications of both those who conducted the language needs assessment and those who tested the pupils whose native language is other than English. They stated that the language needs assessment frequently was conducted merely by categorizing the pupils by appearance, dark being Chicano or Chicana, by Spanish surname, or "slanted eyes" being Chinese.[123] Filipino, Portuguese and Japanese persons objected to these procedures and stated that the personnel conducting surveys or evaluating pupils' progress should be of the same ethnic group as the pupil.[124] Others pointed out that in some ESL-type programs, monolingual English-speaking personnel were thought to be qualified because only the pupil's development in English was being assessed.

(3) Bilingual Program Funding

The complaint cited most was that until the local agencies use regular school funds to support bilingual education, bilingual programs will not succeed. Yet, although the Legislature specifically stated that the purpose of the supplemental financial assistance, provided through the "Bilingual Education Act of 1972" is to help school districts meet most of the special costs of "phasing-in bilingual education programs," none of the original 69 districts funded have assumed those program costs.[125] Many second and third generation Chinese, Mexican, Japanese, Filipino and Portuguese parents and grandparents said they wanted their children to participate in bilingual programs and regain knowledge of their language and their culture. They claimed it as they taxpaying right and as proper to the pluralistic heritage of the United States.[126] Some parents testified that their children were enrolled in AB 2284 programs but were receiving only ESL instruction.[127]

(a) The State Department of Education and Bilingual Funding

The State Department of Finance testified to the need for closer monitoring of program budgets and expenditures by the Department of Education with AB 2284 program funds. Both officials from the Department of Finance and AB 2284 program directors stated that insufficient information and guidance was being provided to the field on program expenditures.[128]

Many called for the use of other state and federal categorical funds to pay for bilingual education programs where NES or LES pupils were enrolled in self-contained classrooms.[129]

Others testified to the need of providing AB 2284 or other categorical funds to pay the salaries of teachers who possess bilingual and bicultural skills in order that districts would hire them to provide bilingual instruction. Many cited the need to increase funds for programs designed to train bilingual teachers, including teachers to serve American Indian pupil needs.[130]

The overall consensus in the testimony presented was the need to clarify the goals of bilingual education and the need to make state categorical funds supplemental to the use of regular local funds in paying for bilingual program services where they were needed and wanted by such pupils' parents.[131] Chapter 4 presents over two hundred recommendations presented to the Special Subcommittee in public testimony according to the three areas of policy program and administration. The various options available to the Legislature are presented in Chapter 4, entitled "The Legislative Options for Bilingual-Bicultural Education."

CHAPTER 4

THE LEGISLATIVE OPTIONS FOR BILINGUAL-BICULTURAL EDUCATION

The Chief School Officer and the Need for Bilingual Program Enforcement

Congress appropriates federal bilingual program funding to provide start-up money to build-up bilingual programs ("capacity building"). Congress sets minimum bilingual program standards and DHEW requires local participants to continue these bilingual program services after the federal funds are terminated ("maintenance capacity"). As a condition of receiving Title I, ESEA funds, the State School Officer annually contracts with DHEW to monitor federal school funds under the state's administrative control for compliance with the Civil Rights Act of 1964 and the guidelines and regulations issued pursuant thereto.[132]

Thus, when states accept federal bilingual and other categorical funds, they also agree to maintain the bilingual services after the federal support is withdrawn and to ensure that LES pupils receive instruction in a language they understand.

California Rural Legal Assistance (CRLA) witnesses argue that this contract stipulation requires the Chief State School Officer to: (1) monitor school districts receiving federal aid for education; (2) require these districts to abide by the provisions of the Civil Rights Act; and (3) require compliance with this Act as a condition for receipt of such funds. CRLA further argues that enforcement by the Chief State School Officer includes withholding federal funds if a local educational agency (LEA) will not comply with the Act.[133] The penalty for non-compliance by the state educational agency (SEA) is the withholding of federal funds by DHEW.[134] The Lau v. Nichols decision reinforces these contract stipulations. The Department of Education argues, however, that the Superintendent of Public Instruction does not have the authority to take punitive action in cases where districts are found out of compliance with the Civil Rights Act.

Bilingual Policy Options of the Legislature

The State Legislature has the constitutional authority to require the Superintendent of Public Instruction to enforce the provisions of the Civil Rights Act.[135] The Legislature could, for instance, direct the Superintendent to withhold federal and state funds to school districts found discriminating against pupils with language differences.[136]

An alternative would be to require all school districts enrolling a substantial number of LES pupils to provide them with instruction in a language they understand. Such action would be a further specification of the Legislature's power to grant the State Board of Education the authority to accept federal funds for education.[137] This action also would conform with the requirement contained in the Early Childhood Education Act of 1972, namely, that "...each child will have an individualized program to permit the development of his maximum potential."[138] Pursuant to such legislation, a pupil whose native language is other than English would have an added potential and an individualized program would require some form of bilingual instruction. If the Legislature chose either option, it would need to determine the goals of bilingual instruction and the means whereby these bilingual goals would be achieved.

The Legislature, for example, could permit LEAs to determine the goals of bilingual instruction. Another choice would be to continue the status quo and provide for voluntary bilingual education programs supported by a limited amount of state categorical funds. Yet, neither of these choices would resolve the question of whether or not the state has an obligation to enforce the Title VII grant provision that local school districts continue providing bilingual services by assuming local and/or state funding after the federal "grant" monies are terminated.

The Legislature could require a transitional bilingual education model based on the goal of teaching pupils English as quickly as possible, as now is implied in the Education Code. Or it could require a bilingual-bicultural maintenance model based on the goal of fostering cultural pluralism in keeping with the "face of changing social and linguistic patterns," cited by the Supreme Court in the case of San Francisco and observable in the demographic changes in California.[139] Either of these choices would ensure compliance with the Civil Rights Act, but only the latter would ensure the development of LES pupils' bilingual potential and provide for parents to participate in the school decision making process.

Recent Legislative Policy Decisions and Possible Bilingual-Bicultural Policy Decisions

Actually the State Legislature has made three policy decisions which would affect any future policy decisions regarding bilingual-bicultural education programs. One of these is in the area of Early Childhood Education. A second is in the area of parent and community participation in the education of children.[140] The third is in the area of financing programs to serve the needs of pupils for whom the lack of English language skills is a "handicap" to their equal educational opportunity.[141]

Early Childhood Education required a "comprehensive restructuring of primary education...to more fully meet the unique needs, talents, interests and abilities of each child." The ECE program would include a pupil's native language other than English within the categories of "talents, interests and abilities of each child." This legislative commitment to individualized instruction logically should include bilingual-bicultural education programs provisions. The fact that many such pupils are limited-English-speaking would seem to constitute an additional "unique need" and thus offer the state an opportunity to reinforce the federal mandate to guarantee equal educational opportunity to LES pupils.

The policy to maximize parent and community involvement "through the decision making process of the California public school system" would localize the decision for bilingual education policy and bilingual instructional methods. Finally, the policy to provide supplemental funds as an incentive tc phase-in full biingual programs of the type defined in the Bilingual Education Act of 1972 is parallel to the Congressional "capacity building" provision in the Title VII Bilingual Education Act. This policy localizes the responsibility for providing bilingual programs to pupils whose native language is other than English. However, the fact that many such pupils also lack English language skills, and this lack is a "handicap" to their equal educational opportunity, adds to the need for a legislative policy requiring bilingual programs on the local level.

Bilingual Policy and Programs Chosen by Other State Legislatures

Massachusetts was the first state to legislate a statewide Transitional Bilingual Education (TBE) program which became law in January of 1972. This TBE program is a "full-time program of instruction given in the pupil's native language and in English (1) in all those courses and subjects which a child is required by law to receive and which are acquired by the child's school committee; (2) in writing the native language of the children...and in oral comprehension, speaking, reading and writing of English; and

(3) in the history and culture of the country, territory or geographic area which is the native land of the parents of children...and in the history and culture of the United States."[142] Massachusetts' bilingual policy requires that "teachers of transitional bilingual education" be bilingual and biliterate and that pupils whose native language is other than English receive instruction in the communication skills of both their native and the English language. School level committees establish the TBE program, enroll the pupils and supervise pupil transfer out of the program when the pupil shows, through results on an annual examination in the oral comprehension, speaking, reading and writing of English, that he/she has achieved "a level of English language skills which will enable him to perform successfully in classes in which instruction is given only in English."[143]

Massachusetts' law also established a Bureau of Transitional Bilingual Education whose director is recommended by the Commissioner and is appointed by the State Board of Education. Reimbursement for the direct costs of TBE programs is provided through a multiyear supplementary state appropriation. All indirect costs associated with TBE programs are termed "reimbursable expenditures" under regular local-state school support funds.

Texas enacted bilingual education in August of 1973. The Texas law contains the same program provisions as the Massachusetts law, except that the pupil is guaranteed a minimum of three years bilingual instruction, unless the parent agrees to have the pupil transferred back into the English only instructional program.[144] Again, however, the bilingual program is transitional, but a pupil whose native language is other than English may continue in the program beyond the three year period "with the approval of the school district and the child's parents or legal guardian."

The Texas Bilingual Act also requires that the teachers "possess a speaking and reading ability in a language other than English in which bilingual education programs are offered" and who possess the general subject area competencies required of all credentialed teaching personnel. Again, the Texas legislature provided a multiyear supplemental fund for the implementation of the bilingual program.

Illinois also adopted a Transitional Bilingual Education Act in October of 1973.[145] The definitions of bilingual program and teachers are the same as those stated in the Massachusetts law. The Illinois provisions for enrollment, transfer and continuance in TBE programs are the same as those stated in the Texas statute, as is the requirement to employ bilingual-biliterate teachers. The Illinois funding provisions, however, differ from those of the prior two states. The Illinois TBE program costs which exceed the expenses of "the average per pupil expenditure" are reported annually and reimbursed from supplementary state funds.

New Jersey enacted a Bilingual Education statute in January of 1975.[146] The bilingual program provisions are again the same as the Massachusetts statute, as is the three year minimum program enrollment guarantee for the LES pupils. The New Jersey, *Title 6 Administrative Code* requires a "certified bilingual teacher," but permits the use of a "team teaching approach," provided that both teachers are certificated.[147] The Administrative Code also creates a Bureau of Bilingual Education in the New Jersey State Department of Education. The responsibilities are many, but two are the requirement for "enforcement of the provisions of this chapter," and for "coordination of local and federal programs geared toward meeting the educational needs of students of limited-English-speaking ability." In addition, the bilingual statutes establish a State Advisory Committee on Bilingual Education and charges it with the responsibility to advise "in the formulation of policies and procedures relating to this Act."

Colorado's "Bilingual and Bicultural Education Act" took effect January 1, 1976; state regulations implementing the "Act" became effective January 27, 1976. The "Act" specifies the program purpose to be "perfecting the English language skills and cultural development...and cognitive and affective development of its students by: utilizing the cultural and linguistic backgrounds of these students in the curriculum; providing these students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and developing cultural and ethnic pride and understanding among these and other students."[148] This legislation is unique in three ways: first, it requires districts to implement bilingual-bicultural programs; secondly, it mandates the program for a four-year period, from Kindergarten through third grade; thirdly, it empowers the Colorado State Board of Education to select the director of the Bilingual-Bicultural Unit in the State Department of Education and creates a Steering Committee composed of fifteen members, three from each of the state's five Congressional districts, chosen by the State Board of Education to assist the Board implement the "Bilingual-Bicultural

Act."[149] The act provides for "bilingual and bicultural education teacher's aides" for the 1975-76 school year and then requires that the program teachers "have competence in the areas of comprehension, speaking, reading, and writing in the two languages" each year thereafter.[150] In addition, the Colorado law provides for coordination of the state and federal bilingual-bicultural program and incorporates most of the federal Title I ESEA regulations.[151]

The Colorado Legislature appropriated categorical funds to implement the "Act," but, similar to the Massachusetts law, allows reimbursement for only "direct attributable additional cost," including "direct support" and "instructional services...in addition to the program which all children in the district would be entitled to receive."[152] Finally, the "Act" specifies that the appropriated funds are supplemental to the general school support funds and prohibits use of these funds "to provide instructional or support services to pupils which are ordinarily provided with other state or local funds to all pupils."[153]

Summary of Bilingual Policy Options Available to the Legislature

A minimum legislative policy would require that LES pupils whose native language is other than English receive instruction in their primary language and English until such time as tests show that their English language skills are at par with their grade level or for a minimum of three years, or both. The program would be required wherever a certain number of LES pupils were enrolled, but the specific instructional method could be left to the discretion of the local parent advisory committees or boards of education. Program options similar to the "_Lau_ Remedies" would be required and would include a mandate that program instructional personnel be certified as bilingual-bicultural. The costs of providing this bilingual instruction over and above the instructional cost supported and generated by the pupil's average daily attendance then would be reimbursed on a yearly basis through a year-to-year budget act appropriation or through a multi-year appropriation carried as a yearly budget act item. The question, however, remains: who would be responsible for enforcing the legislated program mandate?

A second policy option would be to tighten up the requirement for school districts to "phase-in" AB 2284 bilingual and Title VII bilingual programs. The Legislature would assume a posture similar to that specified in the

"Departmental Position on Bilingual Education" memorandum issued by the Under Secretary to the Department of Health, Education and Welfare. Local school districts would be required to provide at least transitional bilingual education (TBE) to LES pupils for a specified time and funded in a manner similar to that provided in option one. But, the policy decision to provide bilingual maintenance programs would be left to the local board of education, with parent or school level committee participation. This policy would conform to both federal and state policy decisions in present bilingual programs and thereby would require that school districts whose boards and parents wanted bilingual maintenance programs fund them out of regular school subventions. If, however, the parent or school level committee, or both, did not have more than an "advisory" role, the same question would arise, namely, who would enforce that portion of the program related to Civil Rights Act compliance?

A third policy option would result from previous California legislative policy decisions in Early Childhood Education and Educationally Disadvantaged Youth legislation. This third option recognizes that a pupil who has a primary language other than English has an ability to be developed and a talent to be maintained both for personal and economic reasons. The personal reasons result from the Legislature's recognition of individual abilities and from its policy of individualizing instruction to develop such abilities. The economic reasons result from the Legislature's recognition that a bilingual pupil or adult has increased saleable skills and job opportunities.[154] This recognition would support a policy to require that bilingual maintenance programs be available wherever a certain number of such pupils were enrolled and/or wherever a certain number of parents requested such a program. The last condition of parental request is in keeping with past law and present federal and state policy.[155] Enforcement would be similar to that presently applicable to any other regular school program.

Bilingual Program and Administrative Options Available to the Legislature Based on the Policy Decisions

Actually, program options follow from the policy options adopted. The administrative options, in turn, result from the policy and program options. Thus, to specify program or administrative recommendations prior to the Legislature's decision on policy options would be pointless. However, in light of the present Lau v. Nichols situation and because of the legislative program policies specified in ECE, EDY, and the Bilingual Education Acts of 1968 and 1972, and supported by public testimony, the following policy is recommended.

1. Provide for the development of assessment instruments to measure native and English language communication skills and for the administration of these instruments by personnel skilled in the native language of the pupils assessed.

2. Specify that the "Lau Remedies" be used as minimum requirements in providing LES pupils services for at least three years. The continued enrollment of LES pupils in the program after the 3 years shall be a local decision, involving the parents and the community.

3. Require that bilingual programs also be bicultural.

4. Require that bilingual programs provide for the development of aural, oral and written communication skills of the LES pupil's English and other than English languages.

5. Require active parent involvement in the planning, implementation and evaluation of bilingual programs.

6. Require that bilingual programs have instructional personnel with certified bilingual-bicultural skills.

7. Establish an Office of Bilingual Education within the State Department Of Education and empower it to set and enforce bilingual education policy and provide technical assistance for the development of school district plans which follow the minimum criteria of

the "Lau Remedies" for meeting the educational needs of all LES pupils by the 1977-78 school year.

8. Establish a state-level Commission on Bilingual-Bicultural Education to be staffed by bilingual professionals of the five major language groups within the state and American Indians chosen by the Governor, Superintendent of Public Instruction, the Legislature and the State Board of Education to develop bilingual policy, program and a five-year implementation plan.

9. Require that the Commission on Bilingual-Bicultural Education/State Department of Education survey available K-12 bilingual-bicultural learning materials and recommend the development, field-testing and dissemination of materials appropriate for the State's LES pupils.

10. Require the Commission on Bilingual-Bicultural Education/State Department of Education to develop counseling and guidance regulations for school districts to eliminate the isolation of LES pupils from the total school program and to facilitate educational opportunities for LES and bilingual pupils.

11. Require the State Department of Education, the Commission for Teacher Preparation and Licensing and the Post-Secondary Education Commission to develop regulations for a coordinated statewide pre- and in-service training program designed to allow staff career ladder mobility and to educate staff in the languages and cultures of LES pupils enrolled in the public schools.

12. Require the development of assessment and evaluation intruments in conjunction with the State Department of Finance and the Legislative Analyst's Office to ensure that the necessary information is available to the State Legislature for making program and fiscal decisions.

13. Provide supplementary state incentive funds to school districts implementing bilingual programs based on the progress of pupils in the communication skills of their native and English languages.

14. Provide a five year-appropriation to be carried over into the yearly budget act so that bilingual programs could submit amended applications each year of the appropriation period through the consolidated application process.

15. Include a carryover provision in the funding formula so that bilingual program funds not expended at the end of a given fiscal year may be carried over into the next fiscal year rather than revert to the general fund.

16. Provide that funding for bilingual programs be used to reimburse districts only for direct costs resulting from program implementation.

17. Provide incentive funds for research projects, for Northern and Southern State Resource Centers and for the development of bilingual materials.

18. Provide funding for a statewide mobile unit to assist districts in planning and implementing bilingual programs.

19. Require that local school boards of education whose schools receive state or federal categorical funds to develop bilingual policy statements for approval by the State Board of Education by the beginning of the 1977-78 school year.

20. Require that public school districts having a certain number of LES pupils use funds generated by those pupils to provide bilingual services as a condition of receiving special categorical funds for bilingual education.

21. Require that public schools, having a certain number of LES pupils and which receive other "compensatory education funds, use those funds to provide bilingual program services.

22. Require that public schools, having a certain number of LES pupils and which receive other state "categorical" funds, use those funds to provide bilingual services.

23. Provide that bilingual funds be used to pay for instructional resource and administrative personnel who are certified as having bilingual and bicultural skills.

24. Set a minimum bilingual aide salary and benefit scale similar to that now established for certificated personnel.

25. Provide incentive grants to post-secondary educational institutions to conduct research in bilingual-bicultural education and to train instructional and administrative personnel in bilingual-bicultural skills, including those qualified to provide services to American Indian pupils.

26. Require that the Education Management and Evaluation Commission review the evaluation reports issued by the State Department of Education and the evaluation procedures used in evaluating the effectiveness of bilingual programs and make recommendations to improve both the reports and the evaluation procedures.

27. Increase state support of Indian Education Centers pursuant to the "Indian Self-Determination Act," so that American Indians may develop model bilingual-bicultural programs and assist school districts having high concentrations of Indian pupils.

FOOTNOTES CHAPTER 1

[1] LES includes both non- and limited-English-speaking pupils for the purposes of this report.

[2] Supreme Court of the United States 94 S. Ct. 786 (1974). The case was filed in the U.S. District Court, San Francisco on March 25, 1970. Edward H. Steinman, Professor of Law, University of Santa Clara, provided an analysis of the Lau decision to the Assembly Committee on Ways and Means, December 10, 1974. A copy of the Lau v. Nichols decision is found in Appendix A.

[3] 20 USC Section 88b, p. 438.

[4] Federal Register, Vol. 34, No. 4, January 7, 1969, Subpart (a), 123.1(b). The report of the Comptroller General of the United States cited in footnote 115 shows $375 million to have been expended in federal Title VII funds between 1968-76, p.3. California received $83 million or 22% of that total.

[5] Statistics in Tables I through III, VII, VIII and IX were approved by the Office of Planning, Federal Administration and Bilingual Education, State Department of Education.

[6] Journal of the Senate, California, Regular Session, Vol. 5, 1971, p. 8800, November 16, 1971. The evaluation conclusions on these two pilot projects may be found in Chapter 3, p. 68.

[7] Enrolled version of SB 1020, Section 33501. Actually, language is an extension of culture and culture is the cradle of language. Thus, linguistically, bilingual-bicultural education is a tautology. Christian, Jane MacNab, Christian, Jr., Chester C., "Spanish Language and Culture in the Southwest," Chapter 11, p. 300 in Language Loyalty in the United States, Fishman, Joshua.

[8] AB 2284, Chapter 1258, Statutes of 1972, Section 5761.

[9] AB 2284, "Apportionments and Expenditures List," dated July 18, 1973, published by the State Department of Education.

[10] Statistics were provided by the Bilingual Section within the Office of Planning, Federal Administration and Bilingual Education, State Department of Education and in some instances differ from SDE's "The Apportionments and Expenditures, AB 2284," Bilingual Education Unit, July 18, 1973.

[11] Public Law 90-247, Title I ESEA, Federal Register, Vol. 32, February 9, 1967, p. 2742.

FOOTNOTES CHAPTER I (Con't.)

[12] "Statewide Ethnic Survey of the California Migrant Education Program," January 15, 1976, issued by the Migrant Education Section, Office of Compensatory Education, California State Department of Education, and California Master Plan for Migrant Education, California State Department of Education, 1976, p. 1.

[13] December, 1972 and cited in the California Master Plan, p. 3.

[14] Statistics were provided by the Migrant Education Section within the Office of Compensatory Education, State Department of Education.

[15] California Master Plan for Migrant Education, ESEA Act of 1965, Title I, P.L. 89-10, as amended by P.L. 89-750 of 1966, California State Department of Education, April, 1974, p. 3.

[16] Ibid. p. 7.

[17] The statistics in Table IV and V were taken from "Statewide Ethnic Survey of the California Migrant Education Program", January 15, 1976, issued by the Migrant Education Section, Office of Compensatory Education, Special Programs and Support Services Division.

[18] The State Department of Education established the Bilingual Bicultural Education Task Force in June of 1971. This Task Force became an Office of Bilingual-Bicultural Education in July of 1974. As of July 1, 1976, the Office has been dissolved and has been subsumed as one of the four sections within the Office of Planning, Federal Administration and Bilingual Education within the Special Programs and Support Services Division.

[19] Education Code, Sections 6499.230 and 6499.232.

[20] Title I, ESEA, Federal Register, Vol. 37, October 3, 1972, paragraph 116.1(i), p. 20760.

[21] Table VI is Table IV found within the "Limited-English-Speaking and Non-English-Speaking Students in California," a report prepared for the California Legislature as required by Education Code, Section 5761.3 and the "Supplementary Report of the Committee on Conferences Relating to the Budget Bill," California State Department of Education, Sacramento, 1975, p. 10.

FOOTNOTES CHAPTER I (Con't.)

An article by Lawrence Wright entitled "Bilingual Education" provides a summary of available bilingual program funds and a comparison of amounts spent on bilingual education and other kinds of programs for the year 1972-73. This article appears on pp. 14-19 in the Race Relations Reporter, September, 1973.

[22] Education Code, Section 6445.6.

[23] Education Code, Section 6445.1.

[24] Policies for Early Childhood Education, California State Department of Education, (Sacramento, 1973) p. 5.

[25] Education Code, Section 6499.232.

[26] This population total is a compilation of three sets of data all of which use the one-quarter basis as the standard for an American Indian. This population includes the many non-California American Indians who have been moved from reservations outside of California in the Federal Government's "Relocation Effort."

[27] Federal Register, Part II, Vol. 40, No. 213, November 4, 1975, paragraph 273.11, p. 51305.

[28] Federal Register, Vol. 40, No. 312, November 4, 1975, paragraph 273.16-18 (P.L. 93-638).

[29] "Indian Self-Determination and Education Assistance Act," Part 273, subpart A., paragraph 273.4, subpart B, paragraphs 273.11, .14 and .16, Federal Register, Vol. 40, No. 213, November 4, 1975, pp. 51305-06. Daniel M. Rosenfelt details the history of Federal and State laws in relation to Indian schools in "Indian Schools and Community Control," Stanford Law Review, Vol. 25, April, 1973, pp. 489-550. The American Indian Journal, Vol. 2, No. 4, April, 1976 traces the complex history of Indian Federal law in "A History of Indian Jurisdiction," pp. 2-15.

[30] Statistics provided by the Bureau of Indian Affairs, Sacramento Area Office and updated by telephone June 11, 1976.

[31] HEW allowed California school districts $115 per identified American Indian pupil for FY 1974-75.

[32] Federal Register, Vol. 38, No. 129, July 6, 1973, paragraph 186.18 of the "Indian Elementary and Secondary School Assistance Act."

[33] Statistics were provided by the Indian Education Unit, Special Programs and Support Services Division, State Department of Education.

FOOTNOTES CHAPTER 1 (Con't.)

[34] SB 2264, Chapter 1425, Statutes of 1974, Sec. 2, the "Appropriation Section." Jack D. Forbes describes the treatment of California Indians and traces the impact of various laws on developing their political consciousness in "The Native American," California Journal, June, 1974, pp. 180-185. This restriction reducing state funds "by any amounts made available by the federal government violates the basic federal regulation which requires that federal funds supplement not supplant state funds.

[35] Statistics were provided by the Indian Education Unit, Special Programs and Support Services Division, State Department of Education.

[36] "Departmental Position on Bilingual Education," memorandum from the Under Secretary, DHEW, Frank Carlucci, November 22, 1974, p. 2, issued under a December 2, 1974 date. A copy of this memorandum appears in Appendix B.

[37] P.L. 93-380, Title VII, Section 123.02, Federal Register, Vol. 40, No. 122, July 24, 1975, p. 26517.

[38] Op. cit. "Departmental Position on Bilingual Education," p. 2.

FOOTNOTES CHAPTER 2

[39] Milton M. Gordon, *Assimilation in American Life: The Role of Race, Religion and National Origins*, (Oxford University Press, 1964) pp. 88 ff.

[40] McWilliams maintains that the segregation of Mexican pupils in California public schools was "largely through default of any determined resistance on the part of Mexican-Americans" and that such segregation was defended on "social differences," "undesirable behavior patterns" and "lower moral standards." Carey McWilliams, *North from Mexico* (New York: Greenwood Press, 1968), p. 281. However, the evidence seems to favor the probability that the Mexicans were included under the term "Diggers." This reference specifically meant the Maidu Indians, but came to include all who were "brown" and educated in Mission schools. Emerson, Haber and Dorsen support this view in *Political and Civil Rights in the United States*. Vol. II (Little, Brown and Co., Boston, 1967) p. 1734. Guadalupe Salinas merely cites the fact, in "Mexican Americans and the Desegregation of Schools in the Southwest," *El Grito: Contemporary Journal of Mexican American Thought*, Spring, 1971, p. 453.

[41] Sixth Annual Report of the Superintendent of Public Instruction of the State of California, given in the Assembly Eighth Session 1856, pp. 1-10.

[42] *Ibid*. p. 9.

[43] *Ibid*. p. 10.

[44] Eighth Annual Report of the State Superintendent of Public Instruction, January 3, 1859, p. 15. Confer footnote 40.

[45] The Statutes of California, passed at the Eleventh Session of the Legislature, 1860 (Published by Authority, Sacramento, 1860) Section 18, p. 323.

[46] *Ibid*., Sec. 8, p. 325.

[47] Arnold H. Leibowitz, "The Imposition of English as the Language of Instruction in American Schools", *Revista De Derecho Puertorriqueño*, Núm 38, Octubre-dicienbre, 1970 Año X, p. 209.

[48] *United States Reports, Cases Adjudged in the Supreme Court*, Vol. 210 (New York, the Banks Law Publishing Co., 1908) p. 81.

FOOTNOTES CHAPTER 2 (Con't.)

[49] Kloss, Heinz, "German-American Language Maintenance Efforts," Chapter 9, p. 213, in *Language Loyalty in the United States*, Fishman, Joshua.

[50] *Ibid*., pp. 233 ff and *op. cit*., Leibowitz, Arnold H., "The Imposition of English as the Language of Instruction in American Schools". pp 183-84.

[51] *Op. cit*., Leibowitz, p. 177, and Kloss, pp. 236-237.

[52] *Op. Cit*., Leibowitz, p. 236.

[53] Highman, John, *Strangers in the Land - Patterns of American Nativism* (New York, Rutgers University Press, 1955) p. 133 ff; *Asian Americans and Pacific Peoples: A Case of Mistaken Identity*, a report prepared by the California Advisory Committee to the U.S. Commission on Civil Rights, February, 1975, p. 5.

[54] *Op. cit*., Leibowitz, p. 180.

[55] *California Assembly Journal* 1893, p. 178, *California Senate Journal* 1893, p. 214. The use of "English literacy" as a legal tool for discriminating against persons whose native language is other than English in the United States is documented by Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," *Notre Dame Lawyer*, Vol. 45, No. 1, fall, 1969, pp. 7-67.

[56] *Op. cit*., *United States Report*, *Governor of Hawaii* v. *Tokushige*, 273 U.S. 298.

[57] *Ibid*., p. 401.

[58] *Op. cit*., *United States Report*, *Governor of Hawaii* v. *Tokushige*, 273 U.S. 298.

[59] *Ibid*.

[60] *Op. cit*., Leibowitz, "The Imposition of English as the Language of Instruction in American Schools," p. 176.

FOOTNOTES CHAPTER 2 (Con't.)

[61] The Civil Rights Act of 1964 in effect reasserts that the rights guaranteed within the first ten amendments and the fourteenth amendment do apply to citizens who are also ethnic minorities. The relationship between the first ten amendments to the Constitution and the Civil Rights Act is touched upon by Americo D. Lapati, Education and the Federal Government: A Historical Record (Mason/Charter, New York, 1975) p. 28 ff. Since courts tend to examine a complaint on the basis of more rather than less specificity, and since the Civil Rights Act and the regulations adopted by the Office for Civil Rights (OCR) to implement it provide more specificity than the fourteenth amendment, the Supreme Court's finding that the defendents violated the plaintiffs' civil rights rather than their fourteenth amendment rights is understandable.

[62] Lau v. Nichols S.C. 94 786 (1974).

[63] Op. cit., Fishman, p. 23.

[64] Ibid. Christian points out that the Spanish speaking population in California increased by 88% between 1950 and 1960, op. cit., Fishman, p. 280.

[65] Op. cit., Asian Americans and Pacific Peoples: A Case of Mistaken Identity, pp. 28 ff.

[66] Federal Register, Vol. 32, No. 4, January 7, 1969, Subpart (a), paragraph 123.1(b). Footnote 115 cites a major conclusion of the Comptroller General of the United States which says that the "language of limited-English-speaking children may not have been used enough in classroom instruction." A basic cause of this non usage of the LES pupil's native language is the fact that many Title VII projects chose the ESL alternative allowed by the original DHEW "Guidelines" - an inclusion which "Office of Education officials acknowledged...should not have been suggested." ("Report to Congress" p. 45-46.)

[67] Taken from testimony of Rodolfo Medina, District Director for Bilingual-Bicultural Education, Pasadena Unified School District, November 4, 1975, Los Angeles, p. 4. William E. Johnson, "The Constitutional Right of Bilingual Children to an Equal Educational Opportunity,: Southern California Law Review, Vol. 47, 1974, pp. 993 ff. Ramirez and Liberty conducted several evaluations of Title VII bilingual projects using the ESL instructional method. Their negative findings forced them to the conclusion that "perhaps we have been applying language teaching strategies to children that are more relevant to adults and older children." "An Evaluative Study of Instructional Strategies and Pupil Cognitive Learning in an English as a Second Language Program of a Spanish-English Education Project." p.5.

FOOTNOTES CHAPTER 2 (Con't.)

Since the method used in ESL was developed by the U.S. Army for military personnel, the fact that a study was necessary to arrive at this conclusion seems strange. Other studies arrive at the same conclusion. A. R. Ramirez and Mary E. Salinas, An Evaluation Study of the ROCK English as a Second Language Program in Spanish-English Bilingual Projects.

[68] Grant, Joseph, "Bilingual Education and the Law: An Overview," Dissemination and Assessment Center for Bilingual Education, Austin, Texas, no date.

[69] Ibid., p. 11.

[70] Ibid.

[71] Ibid.

[72] Johnson, William E., "The Constitutional Right of Bilingual Children to an Equal Educational Opportunity," Southern California Law Review, Vol. 47, 1974, pp. 968 ff. Erica Black Grubb argues the right to bilingual education in "Breaking the Language Barrier: The Right to Bilingual Education," Harvard Civil Rights, Civil Liberties Law Review, Vol. 9, No. 1, January, 1974, pp. 52-94.

[73] Lopez v. Mathews, Riles et al, filed in the U.S. District Court for the Eastern District, April 30, 1974,(Civil S-76-19-TJM).

[74] Chaney v. California State Department of Education, filed in the U.S. District Court for the Northern District (C-75-0472-RHS).

[75] Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols, Summer, 1975, p. 7, published by the Department of Health, Education, and Welfare.

[76] Ibid. p. 21.

[77] Ibid., p. 22.

[78] A copy of this memorandum is found in Appendix B.

[79] This assurance is the Title I, ESEA, Annual Program Plan. The State's "Chief Legal Officer" witnesses the assurance to attest to the fact that the Chief State School Office has the legal authority to make these assurances. The assurance reads in

FOOTNOTES CHAPTER 2 (Con't.)

part, "including the enforcement of any obligations imposed upon a local educational agency or state agency under Section 141(a), the relevant provisions of the regulations promulgated under Title I (45 CFR 116)and the General Provisions Regulations (45 CFR Parts 100, 100B and 100C)." A copy of the 1975-76 assurance and the federal regulations referred to therein is found in Appendix C. Although Amendment X of the United States Constitution reserves to the States "powers not delegated to the United States by the Constitution, nor prohibited by it to the State," the Supreme Court specified that the State's public education responsibility "must be exercised consistently with federal constitutional requirements as they apply to state action." (Cooper v. Aaron, 358 U.S. 1 (1958)).

[80] Opinion No. CV 75/286 I.L., issued November 12, 1972. A copy of this opinion is in Appendix D.

[81] Op. cit. "Lau Remedies," pp. 1, 15-17.

FOOTNOTES CHAPTER 3

[82] Taken from the testimony given in San Diego, October 27, 1975, by Dr. R. F. Valdez, Superintendent, South Bay Elementary U.S.D.

[83] Taken from the testimony given in Los Angeles, November 4, 1975 of Ralph Hernandez, p. 2.

[84] Taken from testimony given in San Diego, October 27, 1975 by Helen Diaz, Past President, Association of Mexican-American Educators..

[85] Taken from testimony given in Fresno, December 3, 1975, from Adelle Martinez, Director, Office of Bilingual-Bicultural Education and William Whiteneck, Associate Superintendent, Special Programs and Support Services Division, State Department of Education.

[86] Taken from testimony provided by letter, dated December 3, 1975 by David Riesling, Coordinator, Native American Studies, University of California, Davis, and from data supplied by the Indian Education Unit, California State Department of Education.

[87] Ibid, Indian Education Unit.

[88] Taken from testimony given in San Francisco, December 9, 1975 by Concha Delgado, District Project Director; by Nadine Hata, Southern California Chairperson of the California Advisory Committee to the United States Commission for Civil Rights and by Joel Gomberg, Attorney to California Rural Legal Assistance (CRLA).

[89] Taken from testimony given in Los Angeles, November 4, 1975 by Ralph Hernandez and in Fresno, December 4, 1975 by Delores Lujano and Cecilia Aguilar. An example of such a lack of monitoring was provided by testimony stating that San Bernardino Unified School District bilingual projects had neven been evaluated; given in Los Angeles, November 4, 1975, p. 3. John H. Rodriguez, Acting Associate Commissioner for Compensatory Educational Programs in a letter to the California Superintendent of Public Instruction, dated February, 1974, and pertaining to Title I funded schools, stated that "in the past five years, the State has made such project reviews of only 30 out of 2,500 to 3,000 projects approved during that time. No reviews have been completed during, and none are planned for, this fiscal year. Meanwhile, the State is faced with two Title I lawsuits and a number of unresolved complaints which effective monitoring might have prevented." p. 4.

FOOTNOTES CHAPTER 3 (Con't.)

[90] Taken from testimony given in Fresno, December 4, 1975 by Nancy Arroyo, Secretary of the Parent Advisory Committee for Bilingual Education, Fresno and in San Francisco, December 9, 1975 by Jose Villa, Executive Director of the Mexican-American Community Services Agency, San Jose, California.

[91] Taken from testimony given in Fresno, December 3, 1975 by Mrs. Etelvina Menchaca, Chairperson, Parents for Bilingual-Bicultural Education, Santa Barbara and in San Francisco, December 9, 1975 by Dr. Leo S. Cardona.

[92] Taken from testimony given in Fresno, December 4, 1975 by Venancia Gaonoa, President, El Concilio de Fresno, Inc.

[93] Taken from testimony given in Fresno, December 4, 1975 from State Department of Finance representatives, Robert LaLiberte, Principal Program Budget Analyst, and Olena Berg, Budget Analyst, testifying for Charles Gocke, Program Budget Manager.

[94] Taken from testimony given in Los Angeles, November 4, 1975, by Rogue Berlanga, Director, Bilingual-Bicultural Education, ABC Unified School District.

[95] Taken from testimony given in Los Angeles, November 4, 1975, by Roberto Rangel, Bilingual-Bicultural Coordinator, Los Angeles Unified School District.

[96] Taken from testimony given in San Diego, October 27, 1975 by Leonardo Fierro, Chicano Federation of San Diego.

[97] Taken from testimony given in Los Angeles, November 3, 1975 by Ms. Ruby Aguilar, member of the Mexican-American Education Commission; Ms. Lopez, member of PICA Family Education Center; Herbert P. Leong, Executive Secretary of the Asian American Education Commission and Dr. Randall C. Jimenez, Director of Chicano Studies, Loyola-Marymount University, Los Angeles.

[98] Taken from testimony given in Los Angeles, November 4, 1975, by Mr. Bruce McPherson, President, Board of Trustees, Hacienda-LaPuente Unified School District.

[99] Taken from testimony given in Fresno, December 3, 1975, by Tomas Olmos, Directing Attorney CRLA - McFarland Office, in San Francisco, December 9, 1975 by Effie Schwarzchild and in Los Angeles, November 4, 1975 by Rose M. Payan, Bilingual-Multicultural-ESL, Teacher-Coordinator, Azusa Unified School District.

FOOTNOTES CHAPTER 3 (Con't.)

[100] Taken from testimony given in San Diego, October 27, 1975 by Dr. Tomas Arciniega, Dean, School of Education, Pasadena Unified School District, in Los Angeles, November 4, 1975 by Rodolfo Medina, and in San Francisco, December 9, 1975 by Phyllis Matusu. Kloss points out that second language "survival is fought in the elementary schools," but "maintenance" depends upon bilingual programs on the secondary level and on the preparation of bilingual teachers on the higher education level. Op. cit., p. 241 and 217 ff.

[101] Taken from testimony given in San Diego, October 27, 1975 by Helen Diaz, Past President, Association of Mexican-American Educators, and in San Francisco, December 9, 1975 by Dr. Leo S. Cardona, Cardona and Associates Educational Consultants, San Jose, California, and Janice Williams, Title I Coordinator, Office of Education, Region IX, DHEW.

[102] Table 4, of the "Limited-English-Speaking and Non-English-Speaking Students in California" published by the State Department of Education, September, 1975.

[103] Taken from testimony given in San Diego, October 27, 1975 by William H. Stegeman, Deputy Superintendent of Operations, San Diego City Schools, in Fresno, December 3, 1975 by Mrs. Etelvina Menchaca, Chairperson, Parents for Bilingual-Bicultural Education, Santa Barbara and by Tomas Olmos, Directing Attorney, CRLA - McFarland Office, p. 3.

[104] Taken from testimony given November 4, 1975 in Los Angeles by Maria Chavez, Advisory Bilingual-Bicultural Program, Los Angeles Unified School District.

[105] Taken from testimony in Los Angeles, November 3, 1975, by Larry Rodriguez, Director, Rincon Indian Education Center; Antonio Salamanca, Consultant to the Commission for Teacher Preparation and Licensing and Teacher Training in California, A Report to the Legislature pursuant to ACR 82 of the 1973 Legislative Session, November,1974, Office of the Legislative Analyst.

[106] Taken from testimony in Fresno, December 3, 1975, by Tomas Olmos, Directing Attorney, CRLA - McFarland Office, pp. 3-4 and in San Francisco, December 9, 1975 by Joel Gomberg, Directing Attorney, CRLA - Sacramento Office.

[107] Taken from testimony given in Los Angeles, November 4, 1975, by Ralph Hernandez, and by Rodolfo Medina, District Director for Bilingual-Bicultural Education, Pasadena Unified School District.

FOOTNOTES CHAPTER 3 (Con't.)

[108] Opinion No. CV 74-250, January 23, 1976 and Order No. 22476, November 5, 1975. A copy of this opinion is included in Appendix E.

[109] Order No. 22468, March 1, 1974. A copy of this opinion is included in Appendix F.

[111] Education Code, Section 13344 and 13344.1 (Article 3.3).

[112] Taken from testimony given in San Francisco, December 9, 1975 by Ling Chi Wang, Lecturer, Asian American Studies Department, University of California, Berkeley; from Antonio Salamanca, Consultant to the Commission for Teacher Preparation and Licensing and from Teacher Training in California, A Report to the Legislature pursuant to ACR 82 of the 1973 Legislative Session, November, 1974. Office of the Legislative Analyst.

[113] Taken from testimony given in Los Angeles, November 4, 1975 by Rodolfo Medina, District Director for Bilingual-Bicultural Education, Pasadena Unified School District, and from Ling Chi Wang, Lecturer, Asian American Studies Department, University of California, Berkeley, in San Francisco, December 9, 1975.

[114] Taken from testimony given in Los Angeles, November 4, 1975 by Armando Rodriguez, President, East Los Angeles Community College.

[115] Taken from testimony given in Los Angeles, November 4, 1975 by Dr. Augusto Britton, Associate Professor of Educational Psychology, California State University, Northridge. The Comptroller General of the United States released a "Report to the Congress," entitled Bilingual Education: An Unmet Need (MWD-76-25) May 19, 1976. The report states that "adequate plans were not made to carryout, evaluate, and monitor the Bilingual Education Program (Title VII ESEA)." The report observes that "the language of Limited-English speaking children may not have been used enough in classroom instruction," and stated "too many English-speaking children (were) in the project classrooms." p. 45.

[116] Barik, Henri C. and Swain, Merril, "English-French Bilingual Education in the Early Grades: The Elgin Study Through Grade Four," pp. 3-17, in The Modern Language Journal, Vol. LX, Numbers 1-2, January-February, 1976.

FOOTNOTES CHAPTER 3 (Con't.)

117 Taken from testimony given in Fresno, December 4, 1975 by Eva Orozco, teacher ESEA, Title I, AB 2284 Bilingual-Bicultural Program, Fresno Unified School District, and in San Francisco, December 9, 1975, by Dr. Leo S. Cardona; also taken from testimony given at a Special Hearing in Los Angeles, April 2, 1976 by Professors Arnulfo G. Ramirez and Russell N. Campbell, UCLA, Department of English.

118 The test data are described by W. E. Lambert and G. R. Tucker, Bilingual Education of Children, and "The Relation of Bilingualism to Intelligence," Elizabeth Peal and Wallace E. Lambert, Psychological Monographs, Vol. 76, No. 27, 1962, pp. 19-21, the situation was as follows:

Protestant, English-only-speaking pupils were immersed in French-only language instruction. Two non-pedegogical fears accompanied the decisions of the Portestant parents to provide French-only language instruction for their children. The French speaking population is in the main Catholic. Thus the Portestant parents were concerned about the possible effects such French-only language instruction might have on the religious loyalty of their children because these schools provided Catholic religious instruction also. The second concern was political in nature. The population of the City of St. Lambert in Quebec was evenly divided between the Protestant, English-speaking and the Catholic, French-English-speaking population. Thus, the Chambly County Protestant Central School Board which had jurisdiction over the City of St. Lambert schools, looked upon the project as a "selling out" to the French Canadians on the matter of regionalization and thus, a threat to English education in the Quebec Province (Lambert, 229). The parents, therefore, had to contend with the opposition of the Board to any such bilingual education program.

Both the St. Lambert and Culver City bilingual projects were monitored, and the testing show the following results:

1. Attitude profiles of the experimental pupils by the fifth grade indicate the pupils enjoy the instructional techniques and want it continued; their feelings toward French people have become decidedly more favorable; and they think of themselves as being both French and English-Canadian in personal makeup.

2. The pupils have become more aware of the cultural similarities as well as the cultural differences and can readily adapt to either social setting without sacrificing their original heritage and upbringing.

FOOTNOTES CHAPTER 3 (Con't.)

3. The pupils prefered the bilingual immersion over French-as-a-Second-Language teaching methods and the St. Lambert control group significantly advanced in all areas of speaking, grammar, reading and comprehension over the group receiving FSL instruction.

4. Parents seem to share in the learning experience of the pupil and share the pupil's enthusiasm for a "dual identity" and pride themselves in the shaping of that development.

5. After the examination of traditional modes of instruction as compared to the teacher feelings of the language switch program, it was evident that French as well as English-only teachers viewed the traditional mode of instruction as adequate but lacking if providing cultural instruction of another heritage. Lambert states "the home-school language switch idea was viewed favorably by Francophone teachers in general, but not by Anglophone teachers, who, in spite of the apparent success of the program, apparently view this type of program as a threat to their job security. This reaction by Anglophone teachers calls for a very thorough follow-up study. Their resentment could jeopardize the development of similar programs in other settings and if they see no chance of playing an equivalent role in French-Canadian schools, they could leave the teaching profession permanently."

6. Lambert sites the political pressure issue by stating that although the language switch program has no adverse effects on English language in the Province or on bilingualism eroding the English-Canadian culture, the success of the program depends chiefly on those involved and in providing them an opportunity to take an active part in shaping the program.

FOOTNOTES CHAPTER 3 (Con't.)

Lambert states the basic question as follows: "Will the power figures in the English-speaking community make a move to limit or stop the program...(or will) parents, children, school authorities, and teachers be successful in their demand that the program continue and expand?"

Thus, if NES or LES pupils were immersed in a bilingual-bicultural program and instructed in a language they understood, while at the same time learning English, they would develop a much more positive attitude toward the Anglo-American language and culture than they have shown or now display while at the same time developing their native language and culture. The results of this "positive attitude" on racial tension in communities was underscored by Dr. Neil Francis, District Superintendent, Greenfield Unified School District, South Monterey County, Fresno, December 4, 1975.

[119] San Francisco Unified School District, AB 116 Chinese Bilingual Program, Annual Evaluation Report, August, 1975, Thomas E. Whalen, Ph.D., p. 28. Evaluation Report, 1972-73/1974-75, Primary Bilingual Program, AB 116, San Diego City Schools, Delores M. Celia, Project Director, July, 1975, p. 29.

[120] Taken from testimony given in Fresno, December 3, 1975 by Robert Carrillo, Reorganization Specialist and Robert Emerson, Case Worker, Central Valley Regional Center.

[121] Taken from testimony given in Los Angeles, November 4, 1975, by Dr. Augusto Britton, Professor of Research and Evaluation, California State University, Northridge.

[122] Op. cit., Professor Arnulfo Ramirez, Russel N. Campbell, UCLA, Department of English.

[123] Taken from testimony given in Los Angeles, November 4, 1975 by Ralph Hernandez and in San Francisco, December 9, 1975, by Ling Chi Wang, Lecturer, Asian American Studies Department, University of California, Berkeley.

[124] Taken from testimony given in San Diego, October 27, 1975, by Paz Uro, Bilingual-Multicultural Resource Teacher, Southwest Junior High School, San Diego and written testimony submitted by Anita E. Pascua, President, Filipino Educator's Association.

[125] Taken from testimony given in Fresno, December 4, 1975, by William A. Melendez, Project Coordinator, Title VII, Salinas Union High School District.

FOOTNOTES CHAPTER 3 (Con't.)

[126] Taken from testimony given in San Diego, October 27, 1975, by Gus Chavez, Director Office of Educational Opportunity/ Minority Programs, San Diego State University, and in Fresno, November 4, 1975, by Eva Orozco, Teacher ESEA Title VII and AB 2284 Bilingual-Bicultural Program.

[127] Taken from testimony given in Fresno, December 4, 1975, by Cecilia Aguilar, Chairperson, Parents Advisory Committee, Winchell School, and Mrs. Delores Lujano.

[128] Taken from testimony given in Fresno, December 4, 1975, by Robert LaLiberte, Principal Program Budget Analyst, testifying for Charles Gocke, Program Budget Manager for the Educational Systems Unit, State Department of Finance, by Nancy Arroyo, Secretary, Parent Advisory Committee of Bilingual Education, Fresno Unified School District and *op. cit.* Dr. Leo S. Cardona.

[129] Taken from testimony given in San Diego, October 27, 1975, by William H. Stegeman, Deputy Superintendent, Operations, San Diego City Schools.

[130] Taken from testimony given in San Diego, October 27, 1975 by Dr. John Rouillard, Director, Native American Studies Program, San Diego State University; in Fresno, December 3, 1975, by John Dorsey, Director, Tule River Education Center; Mr. Herb White, State Director, Mini Corps, Oroville, California; Mr. Keith Chun, Clerk, Fresno Board of Education; in San Francisco, December 9, 1975, by Nobusuke Fukuda, Co-Chairperson, Parents Advisory Committee, Japanese Bilingual-Bicultural Education Program, San Francisco Unified School District.

[131] Taken from testimony given in Fresno, December 9, 1975, by Dr. Neil Francis, District Superintendent, Greenfield Union School District, Southern Monterey County. Kloss observes that the German speaking citizens were "sufficiently influential to prevent Theodore Roosevelt's renomination "in 1916 because of his adament stand against "catering" to the immigrants by aiding them to maintain their own languages. *Op. cit.*, p. 249 et passim.

FOOTNOTES CHAPTER 4

[132] This contract is required by paragraph 100b.15 (45 CRF 116). A copy of California's contract for the 1975-76 school year appears in Appendix C.

[133] Taken from testimony given in San Francisco, December 9, 1975 by Joel Gomberg, Directing Attorney, CRLA, Sacramento. The Special Subcommittee staff consultant was assured that the Chief State School Officer's responsibility "to enforce" did in fact include the authority to take punitive action, pursuant to paragraph 100b, (45 CFR Part 80). This Title I assurance was acknowledged to be the basis for this authority and the Attorney General's opinion requested by Assemblyman Chacon was to be revised to so state. This opinion, however, will not be released as per a letter by Elizabeth Palmer, Associate Attorney General, dated June 9, 1976.

[134] 483F.2d 791.

[135] The State Legislature has a legal basis for taking action on this issue. Article IX, Section 5 and 14 of the California Constitution gives the Legislature the power to "provide for a system of common (free) schools." Section 2 provides for the election of a State Superintendent of Public Instruction. The Legislature has a constitutional charge regarding public school education which the State Superintendent of Public Instruction is responsible to administer. The Constitution, however, does not specify the responsibilities or powers of the State Superintendent for enforcing the provisions of the Civil Rights Act, but the State Legislature can specify them.

[136] 35 CFR 11595, Federal Register, July 18, 1970 and the "Memorandum" by J. Stanley Pottinger, Director, Office for Civil Rights, May 25, 1970. This memorandum appears in Appendix G.

[137] Division 2, Chapter 5, Education Code, Section 553.

[138] Dymally's "Early Childhood Education Act," SB 1302, Chapter 1147, Statutes of 1972, Section 6445.01.

[139] In a "response to a special request," dated July 18, 1975, statistics from the Population Research Unit, State Department of Finance, show that the population of selected ethnic groups of California increased by 5% between 1970 and 1974, but Spanish origin or descent group increased 18.5% during the same four year period; the American Indian population shows a 29% increase for the same period.

FOOTNOTES CHAPTER 4 (Con't.)

[140] Education Code, Section 6445.5 and SB 90, Chapter 1406, Statutes of 1972, Education Code, Sections 6499.230, .231, .232 and .234, Education Code, Section 5761.

[141] AB 2284, The Bilingual Education Act of 1972 recognized that "high quality bilingual programs...would allow the acquisition by students of educational concepts and skills needed to improve the development of human resources in the state." Education Code, Section 5761, AB 116, Chapter 1521, Statutes of 1971 termed the lack of English skills a "handicap."

[142] Chapter 1005, Acts of 1972, Annotated Laws of Massachusetts, Supplement to Volume 2C, C71A.

[143] Ibid.

[144] Chapter 392, Acts of 1973, 63rd Leg., paragraph 1, Title 2, 21.454.

[145] P.A. 78-727, paragraph 1, Article 14C, Laws 1973.

[146] Chapter 197, Laws of 1972, NJSA, 18A:35-15 to 26.

[147] Title 6, Subtitle F. Chapter 31, 6:301-1.1.

[148] Section 1, Title 22, Colorado Revised Statutes of 1973, Article 24, paragraph 22-24-103 (10).

[149] The Massachusetts law establishes a Bureau of Transitional Bilingual Education and provides that the State Board of Education appoint the director of the Bureau. In addition, the New Jersey "Bilingual Education," Title 6 Administrative Code creates both a State Advisory Committee on Bilingual Education and a Bureau of Bilingual Education within the State Department of Education. However, the Colorado law empowered the State Board of Education to select the director of the Bilingual-Bicultural Unit and to create the State Steering Committee. Thus, control of these agencies is, in the case of the Steering Committee, localized in the various congressional communities, and, in the case of the Bilingual Unit, located outside the state and local educational agencies. This makes the Colorado law unique in this respect also.

FOOTNOTES CHAPTER 4 (Con't.)

[150] Ibid., paragraphs 22-24-103 and 177(2).

[151] Ibid., paragraphs 22-24-103 (16) and 116.

[152] Ibid., paragraph 22-24-103 (6).

[153] Ibid., paragraphs 22-24-17 (5) through (9).

[154] The Alatorre-Dymally Bilingual Services Act, AB 86, Chapter 1182, Statues of 1973 requires state and local public agencies to employ "a sufficient number of qualified bilingual persons in public contact positions or interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person." Assemblyman Chacon's AB 3147 seeks to further such employment. opportunities.

[155] Education Code, Sections 5761.7 and 7021(c).

BIBLIOGRAPHY

BOOKS

Burns, J.A., The Catholic School System in the United States. New York:Benziger Brothers. 1908.

California Advisory Committee to the U.S. Commission on Civil Rights, Asian Americans and Pacific Peoples: A Case of Mistaken Identity. Washington, D.C.:U.S. Government Printing Office. February, 1975.

Emerson, Thomas I., Haber, David, and Dorsen, Norman, Political and Civil Rights in the United States. Vols. I and II. Boston:Little, Brown and Co. 1967.

Gordon, Milton M., Assimilation in American Life: The Role of Race, Religion and National Origins. London: Oxford University Press. 1964.

Highman, John, Strangers in the Land - Patterns of American Nativism. New York:Rutgers University Press. 1955.

Lambert, Wallace E. and Tucker, G. Richard, Bilingual Education of Children. Massachusetts:Newbury House Publishers, Inc. 1972.

Lapati, Americo D. Education and the Federal Government: A Historical Record. New York:Mason/Charter. 1975.

McWilliam, Carey, North From Mexico. New York:Greenwood Press. 1968.

Office for Civil Rights. Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under Lau v. Nichols. Washington D.C.: Government Printing Office. Summer, 1975.

United States Reports, Cases Adjudged in the Supreme Court, Vol. 210. New York:Banks Law Publishing Co. 1908.

ARTICLES

American Indian Journal, Vol. 2, No. 4, "A History of Indian Jurisdiction." 1976:pp. 2-15.

Barik, Henri C. and Swain, Merril, "English-French Bilingual Education in the Early Grades: The Elgin Study Through Grade Four," *The Modern Language Journal*, Vol, LX, November 1-2, January-February, 1976:3-17.

Carlucci, Frank, Under Secretary DHEW, "Departmental Position on Bilingual Education," DHEW Memorandum November 22, 1974, issued under a December 2, 1974 date:pp 5.

The Comptroller General of the United States, "Bilingual Education: An Unmet Need," *Report to the Congress*. (MWD-76-25) May 19, 1976:pp.54.

Fishman, Joshua, "Spanish Language and Culture in the Southwest." Chapter 11, *Language Loyalty in the United States*. A. Paris, Mouton & Co. 1966:pp.300.

Forbes, Jack D. "The Native American." *California Journal*, 1974:pp 180-185.

Grant, Joseph, "Bilingual Education and the Law: An Overview," Dissemination and Assessment Center for Bilingual Education, Austin, Texas, no date:pp.24.

Grubb, Erica Black, "Breaking the Language Barrier: The Right to Bilingual Education," *Harvard Civil Rights Civil Liberties Law Review*, Vol. 9. No. 1, 1974:pp. 52-74.

Johnson, William E. "The Constitutional Right of Bilingual Children to an Equal Educational Opportunity," *Southern California Law Review*, Vol. 47, 1974:pp. 934-997.

Kloss, Heinz, "German-American Language Maintenance Efforts." *Language Loyalty in the United States*, Fishman, Joshua. A. Paris, Mouton & Co. 1966:pp. 206-252.

Leibowitz, Arnold H. "English Literacy: Legal Sanction for Discrimination." *Notre Dame Lawyer*, Vol, 45, No. 1. Fall: 1969. pp.7-67.

Leibowitz, Arnold H. "The Imposition of English as the Language of Instruction in American Schools." *Revista De Derecho Puertorriqueño*, Núm 38, Octubre-diciembre, 1970 Año X. pp. 175-244.

Peal, Elizabeth and Lambert, W.E. "The Relation of Bilingualism to Intelligence." Psychological Monographs. Vol. 76, No. 27, 1962:pp. 1-23.

Ramirez, A. R., Liberty, Paul G., Jr. "An Evaluative Study of Instructional Strategies and Pupil Cognitive Learning in an English as a Second Language Program of a Spanish English Education Project." March, 1975:pp. 9. Paper presented at American Educational Research Association Meeting, New Orleans, Louisiana, February 25 - March 1, 1973.

Rosenfelt, Daniel M., "Indian Schools and Community Control," Stanford Law Review, Vol. 25, 1973:pp. 489-550.

Salinas, Guadalupe, "Mexican Americans and the Desegregation of Schools in the Southwest." El Grito: Comtemporary Journal of Mexican American Thought, Spring 1971:pp. 445-468.

Wright, Lawrence, "Bilingual Education." Race Relations Reporter, September, 1973:pp. 14-19.

LAU v. NICHOLS

Supreme Court of the United States
94 S. Ct. 786 (1974)

Mr. Justice DOUGLAS delivered the opinion of the Court.

The San Francisco California school system was integrated in 1971 as a result of a federal court decree, 339 F. Supp. 1315. See Lee v. Johnson, 404 U.S. 1215. The District Court found that there are 2,856 students of Chinese ancestry in the school system who do not speak English. Of those who have that language deficiency, about 1,000 are given supplemental courses in the English language.[1] About 1,800 however do not receive that instruction.

This class suit brought by non-English speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seeks relief against the unequal educational opportunities which are alleged to violate the Fourteenth Amendment. No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation.

The District Court denied relief. The Court of Appeals affirmed, holding that there was no violation of the Equal Protection Clause of the Fourteenth Amendment nor of § 601 of the Civil Rights Act of 1964, which excludes from participation in federal financial assistance, recipients of aid which discriminate against racial groups, 483 F.2d 791. . . .

The Court of Appeals reasoned that "every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system," 483 F.2d, at 797. Yet in our view the case may not be so easily decided. This is a public school system of California and § 71 of the California Education Code states that "English shall be the basic language of instruction in all schools." That section permits a school district to determine "when and under what circumstances instruction may be given bilingually." That section also states as "the policy of the state" to insure "the mastery of English by all pupils in the schools." And bilingual instruction is authorized "to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language."

---

[1] A report adopted by the Human Rights Commission of San Francisco and submitted to the Court by respondent after oral argument shows that, as of April 1973, there were 3,457 Chinese students in the school system who spoke little or no English. The document further showed 2,136 students enrolled in Chinese special instruction classes, but at least 429 of the enrollees were not Chinese but were included for ethnic balance. Thus, as of April, 1973, no more than 1,707 of the 3,457 Chinese students needing special English instruction were receiving it.

Moreover § 8573 of the Education Code provides that no pupil shall receive a diploma of graduation from grade 12 who has not met the standards of proficiency in "English," as well as other prescribed subjects. Moreover by § 12101 of the Education Code children between the ages of six and 16 years are (with exceptions not material here) "subject to compulsory full-time education."

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

We do not reach the Equal Protection Clause argument which has been advanced but rely solely on § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, to reverse the Court of Appeals.

That section bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance." The school district involved in this litigation receives large amounts of federal financial assistance. HEW, which has authority to promulgate regulations prohibiting discrimination in federally assisted school systems, 42 U.S.C. § 2000d, in 1968 issued one guideline that "school systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system." 33 CFR § 4955. In 1970 HEW made the guidelines more specific, requiring school districts that were federally funded "to rectify the language deficiency in order to open" the instruction to students who had "linguistic deficiencies," 35 Fed.Reg. 11595.

By § 602 of the Act HEW is authorized to issue rules, regulations, and orders to make sure that recipients of federal aid under its jurisdiction conduct any federal financed projects consistently with § 601. HEW's regulations specify, 45 CFR § 80.3 (b)(1), that the recipients may not:

> "Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> . . . .
>
> "Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;"

Discrimination among students on account of race or national origin that is prohibited includes "discrimination in the availability or use of any academic . . . or other facilities of the grantee or other recipient." *Id.*, 80.5(b).

Discrimination is barred which has that effect even though no purposeful design is present: a recipient "may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination" or has "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." *Id.*, 80.3(b)(2).

It seems obvious that the Chinese-speaking minority receives less benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the Regulations. In 1970 HEW issued clarifying guidelines (35 Fed.Reg. 11595) which include the following:

> "Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

"Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track."

Respondent school district contractually agreed to "comply with title VI of the Civil Rights Act of 1964 . . . and all requirements imposed by or pursuant to the Regulations" of HEW (45 CFR Pt. 80) which are "issued pursuant to that title . . ." and also immediately to "take any measures necessary to effectuate this agreement." The Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed. . . .

We accordingly reverse the judgment of the Court of Appeals and remand the case for the fashioning of appropriate relief.

Reversed.

Mr. Justice WHITE concurs in the result.

Mr. Justice STEWART, with whom THE CHIEF JUSTICE and Mr. Justice BLACKMUN join, concurring in the result.

It is uncontested that more than 2,800 school children of Chinese ancestry attend school in the San Francisco Unified School District system even though they do not speak, understand, read, or write the English language, and that as to some 1,800 of these pupils the respondent school authorities have taken no significant steps to deal with this language deficiency. The petitioners do not contend, however, that the respondents have affirmatively or intentionally contributed to this inadequacy, but only that they have failed to act in the face of changing social and linguistic patterns. Because of this laissez faire attitude on the part of the school administrators, it is not entirely clear that § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, standing alone, would render illegal the expenditure of federal funds on these schools. For that section provides that "[n]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

On the other hand, the interpretive guidelines published by the Office for Civil Rights of the Department of Health, Education, and Welfare in 1970, 35 Fed.Reg. 11595, clearly indicate that affirmative efforts to give special training for non-English speaking pupils are required by Tit. VI as a condition to receipt of federal aid to public schools.

. . . .

The critical question is, therefore, whether the regulations and guidelines promulgated by HEW go beyond the authority of § 601. Last Term, in Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973), we held that the validity of a regulation promulgated under a general authorization provision such as § 602 of Tit. VI "will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'" I think the guidelines here fairly meet that test. Moreover, in assessing the purposes of remedial legislation we have found that departmental regulations and "consistent administrative construction" are "entitled to great weight." The Department has reasonably and consistently interpreted § 601 to require affirmative remedial efforts to give special attention to linguistically deprived children.

For these reasons I concur in the judgment of the Court.

Mr. Justice Blackmun, with whom The Chief Justice joins, concurring in the result.

I join Mr. Justice Stewart's opinion and thus I, too, concur in the result. Against the possibility that the Court's judgment may be interpreted too broadly, I stress the fact that the children with whom we are concerned here number about 1800. This is a very substantial group that is being deprived of any meaningful schooling because they cannot understand the language of the classroom. We may only guess as to why they have had no exposure to English in their preschool years. Earlier generations of American ethnic groups have overcome the language barrier by earnest parental endeavor or by the hard fact of being pushed out of the family or community nest and into the realities of broader experience.

I merely wish to make plain that when, in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish or any language other than English, I would not regard today's decision, or the separate concurrence, as conclusive upon the issue whether the statute and the guideline require the funded school district to provide special instruction. For me, numbers are at the heart of this case and my concurrence is to be understood accordingly.

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
DATE: DEC. 2, 1974

TO: Assistant Secretary for Education

FROM: The Under Secretary

SUBJECT: Departmental Position on Bilingual Education

At the ASE Management Conference on October 1, 1974, I directed that OE promulgate a clear, detailed set of guidelines and clearly bring to the attention of all concerned OE employees and grantees the Federal policy for the Bilingual Education program. The basis for these guidelines was to be my testimony and that of the then Acting Director of Civil Rights before Congress in March of this year, following the Supreme Court decision on the case of Lau v. Nichols. The purpose of this memorandum is to provide OE additional guidance to facilitate preparation of the guidelines.

In its simplest terms, the Supreme Court in Lau affirmed the responsibility of Local Education Agencies (LEA's) to comply with Title VI of the 1964 Civil Rights Act, and HEW regulations and guidelines issued pursuant thereto. These guidelines and regulations require that school districts take affirmative action to rectify the language deficiencies of children of limited or non-English speaking ability in such a fashion that they may enjoy equal access to the educational opportunities provided to all other students by the school system. In its decision, the Court made clear that it is the responsibility of LEA's to develop appropriate affirmative action programs for students of limited or non-English speaking ability and that the goal of such programs is to ensure equal educational opportunity. The Federal responsibility is to ensure, under Title VI, that such programs are developed and implemented -- and, to that end, the Office of Civil Rights has markedly expanded its FY 1975 compliance program in this area.

Beyond the Federal responsibility for Civil Rights compliance/enforcement, the Administration and Congress have assumed a Federal capacity building role in the area of bilingual education. This role includes such related activities as research, testing, and dissemination of educational approaches, models and techniques for teaching students with special education needs, curriculum development, teacher training, and technical assistance to States and LEA's. While these activities are obviously not exclusively a Federal responsibility, and should not be, the ability of the Federal government to mount such efforts with the needs of the entire nation in mind makes it an obvious and substantial participant in such endeavors. It should be reiterated, however, that this Federal role is one of providing assistance to States and LEA's in building their capacities to address effectively the needs of limited and non-English speaking youngsters. It is not a service role which would supplant the historic State and local responsibility for funding and administering this country's education system.

The goal of this Federal capacity building effort, as is the case in Federal civil rights compliance/enforcement activities, is the provision of equal educational opportunities for all youngsters. As I have testified, the Federal government should clearly not insist, as some would seem to propose, that special language programs attempt to support the more extensive cultural interests of the various ethnic minorities in American society. The cultural pluralism of American society is one of its greatest assets, but such pluralism is a private matter of local choice, and not a proper responsibility of the Federal government. This interpretation of the goal of the Federal bilingual education program was confirmed by the Conference Report on H.R. 69 (now P.L. 93-380) which states on page 148, "The House recedes to the Senate on the definition of a 'bilingual education program' with an amendment to emphasize the conferees' concern that the new definition not be misinterpreted to indicate that an ultimate goal of the program is the establishment of a 'bilingual society'."

A frequent misunderstanding which seems to have provoked unnecessary and fruitless debate over bilingual policy is the failure to distinguish the goals of bilingual/bicultural programs from the means of achieving them. P.L. 93-380 emphasizes strongly that "a primary means by which a child learns is through the use of such child's language and cultural heritage...and that children of limited English-speaking ability benefit through the fullest utilization of multiple language and cultural resources." But the law makes it equally clear that the ultimate goal of Federal bilingual education programs is "to demonstrate effective ways of providing, for children of limited English-speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language."

As stated in my testimony, we would obviously like to be able to specify the exact nature of appropriate programs to provide youngsters of limited or non-English speaking ability equal access to the educational opportunities provided all other students by the school system. However, given the current state of the art in bilingual education, this specificity is neither possible nor desirable. Programs to provide competency in English for limited or non-English speaking children vary widely. They can range from special language tutoring, to separate English language instruction classes (and approaches vary widely within this category), to bilingual education, to complete bilingual/bicultural education. Intuitively, programs -- particularly for younger children -- with a strong bilingual/bicultural component would seem to be preferable from both an educational effectiveness and equal educational opportunity standpoint to those which may impart some English speaking competence but deprive the limited or non-English speaking youngster of the opportunity to advance through the school system at a grade level commensurate with his or her age, while simultaneously failing to maintain in the youngster a positive concept of his or her cultural heritage. The particular approach and content of a model necessary to achieve this result, however, has not been identified. We simply do not have firm evidence to embrace any one model to the exclusion of others.

The variations in concentration of limited or non-English speaking children in a district, the number of different languages involved, the ages of the youngsters, the degree of native language competency, and the degree of English language competency suggest that different approaches may be appropriate in different situations. In particular, the approach necessary to enable youngsters of limited or non-English speaking ability presently in the school system to attain competency in English at a grade level commensurate with their age may vary widely.

The difficulties in specifying a single method for providing equal educational opportunity to limited or non-English speaking youngsters were clearly recognized by the Congress in Title VII of P.L. 93-380. I refer specifically to Section 703, "Definitions; Regulations" which reads in part:

> The term 'program of bilingual education' means a program of instruction, designed for children of limited English speaking ability in elementary and secondary schools, in which, with respect to the years of study to which such program is applicable

> "(i) there is instruction given in, and study of, English and to the extent necessary (emphasis added) to allow a child to progress effectively through the educational system, the native language of the children of limited English speaking ability, and such instruction is given with appreciation for the cultural heritage of such children, and, with respect to elementary school instruction, such instruction shall, to the extent necessary (emphasis added), be in all courses or subjects of study which will allow a child to progress effectively through the educational system;"

This same section further specifies that "in no event shall the program be designed for the purpose of teaching a foreign language to English speaking children." It is clearly the intent of Congress that the goal of Federally-funded capacity building programs in bilingual education be to assist children of limited or non-English speaking ability to gain competency in English so that they may enjoy equal educational opportunity -- and not to require cultural pluralism.

In addition to the above definitions, Section 703 specifies that:

> "...children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable (emphasis added), in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment."

This requirement is reinforced by the stipulation that applications for bilingual funds must be developed in consultation with a representative advisory committee, and that, where appropriate, such committees include representatives of secondary school students to be served.

Given the above, it should be possible for OE to develop the guidelines for implementation of the Bilingual Education Program which I requested on October 1, 1974. Further, regulations and funding criteria for applications for bilingual demonstration projects should be consistent with those guidelines. To reiterate, both the guidelines and regulations should emphasize that the Federal capacity building role, as distinguished from the Federal civil rights compliance/enforcement responsibilities, is to assist SEAs and LEAs in developing effective programs to provide equal educational opportunities to all their limited or non-English speaking students. No single program is appropriate for the individual circumstances of all LEAs subject to the requirements of Title VI of the 1964 Civil Rights Act as reinforced by Lau -- and none should be specified.

I look forward to reviewing the guidelines, regulations and funding criteria, and my staff will continue to closely monitor progress in implementing Title VII of P.L. 93-380 through the OPS system, as well as other appropriate mechanisms.

Frank Carlucci

Prepared by: DOOLIN, EP, x51878, 11/22/74

APPENDIX C

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

Title I, ESEA, Annual Program Plan, Fiscal Year Ending June 30, 1976.

The California State Department of Education hereby applies for participation in the program under Title I of the Elementary and Secondary Education Act and submits the following assurances as its annual program plan in accordance with the General Application filed by this agency under Section 434 (b) (1) of the General Education Provisions Act.

I. Assurances

The California State Department of Education assures the Commissioner of Education (in addition to the assurances filed in the General Application):

A. Approval of Application and Enforcement of Obligations

That, except as provided in Section 143(b), payments under Title I of the Act will be used only for programs and projects which have been approved by the State Educational Agency pursuant to Section 141(a) and which meet the applicable requirements of that Section and Sections 121 and 123, and that such agency will in all other respects comply with the provisions of Title I of the Act and the regulations thereunder, including the enforcement of any obligations imposed upon a local educational agency or State agency under Section 141(a), the relevant provisions of the regulations promulgated under Title I (45 CFR 116) and the General Provisions Regulations (45 CFR Parts 100, 100b, and 100c).

B. Reports

That the State Educational Agency (A) will submit to the Commissioner periodic reports (including the results of objective measurements required by Section 141 (a) (6) and of research and replication studies) evaluating the effectiveness of payments under Title I of the Act and of particular programs assisted under it in improving the educational attainment of educationally deprived children, and (B) will keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

II. Statement of Purpose

The funds allocated to State and local agencies will be used in accordance with the terms of approved applications to meet the special educational needs of:

1. Educationally deprived children residing in school attendance areas with high concentrations of children from low-income families.
2. Children in local institutions (not under a State Agency) for neglected or delinquent children.
3. Children in schools operated or supported by State Agencies directly responsible for the free public education of children in institutions for neglected or delinquent children.

Chief State School Officer

Signature Wilson C. Riles

Name Wilson C. Riles

Official Title Superintendent of Public Instruction

Date August 20, 1975

Certificate Regarding Legal Authority

The California State Department of Education has the authority under State law to perform the duties and functions of a State Educational Agency under Title I of the Act and the regulations in 45 CFR Part 116, including those arising from the assurances stated above.

Attorney General or Chief Legal Officer

Signature Edmund E. White

Name EDMUND E. WHITE

Official Title Deputy Attorney General

Date September 2, 1975

Governor's Comments

The following (or attached) are the comments received from the Governor, or a statement that the Governor does not have any specific comments, on this annual program plan.

I CERTIFY THAT THE GOVERNOR'S OFFICE HAS BEEN CONTACTED IN REGARD TO THIS ANNUAL PROGRAM PLAN. THE GOVERNOR'S REPRESENTATIVES STATE THAT THEY HAVE NO SPECIFIC COMMENTS AS OF THIS DATE, BUT THE GOVERNOR RESERVES THE RIGHT TO MAKE COMMENTS WITHIN THE ALLOWED SPECIFIED TIME PERIOD. IF THE GOVERNOR DOES MAKE COMMENTS IN THE FUTURE, WE WILL FORWARD THEM FOR INCLUSION IN THE CALIFORNIA ANNUAL PROGRAM PLAN.

Manuel V. Ceja
MANUEL V. CEJA, ASSISTANT SUPERINTENDENT
OF PUBLIC INSTRUCTION, COMPENSATORY
EDUCATION

Commissioner's Approval

Approved ______________________

T.H. Bell
US Commissioner of Education

Date OCT 10 1975

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
STATE BUILDING, SAN FRANCISCO 94102

APPENDIX D

November 12, 1975

Honorable Peter R. Chacon
Assemblyman, 79th District
State Capitol, Room 4167
Sacramento, California 95814

Re: Opinion No. CV 75/286 I.L.

Dear Mr. Chacon:

You have asked whether a policy statement of the State Board of Education regarding proposed programs for children with limited English language skills is constitutional.

Preliminarily, we note that we cannot say that a "policy statement" is not constitutional; such a statement is merely precatory and reflective of a point of view. It does not have the force of law although, as a practical matter, local school districts may be inclined to implement it. Accordingly, we will discuss the legal consequences which would result should the goals and options set forth in the "Policy Statement" be adopted. Our conclusion is that the implementation of the proposals in the policy statement would be constitutional and consistent with statutory and case law.

ANALYSIS

By way of summary, the policy statement commences with a recognition that there is a substantial number of children in California who have limited comprehension and fluency in the English language and that "an appropriate delivery system" is required to meet the needs of these students. The statement acknowledges that the State must act affirmatively in this area to comply with the instruction of the U.S. Supreme Court as set forth in *Lau v. Nichols* 414 U.S. 563 (1974). Finally, the statement lists a number of options available to satisfy the educational needs of limited English-speaking students. These include transitional bilingual instruction, partial bilingual instruction, full bilingual instruction, and lastly, comprehensive bilingual-bicultural educational programs.

The need for bilingual education in this country for children with limited English language skills has been exhaustively documented. Its rationale has been succinctly stated in the recent case of *Keyes v. School Dist. #1, Denver, Colo*, 380 F.Supp. 673 (D.C. Colo. 1974) 1/ where the court endorsed the views of a prominent educator "that minority youngsters often fail or perform poorly in the typical American school system today, because the school the child attends, whether integrated or segregated, is largely an alien world to him, where classes, including the most basic of skills, are taught in a language which the child often does not comprehend or lacks facility in, where he is asked to relate to experiences which have no relevance to him outside the school and where he is often taught to regard negatively his own background, culture and personal abilities." *Id.* at 694-695. See also, Johnson, *The Constitutional Right of Bilingual Children to an Equal Educational Opportunity*, 47 So.Cal.L.Rev. (1974); Comment, 62 Cal.L.Rev. 157 (1974); 35 Fed. Reg. 11595 (1970); *Hearings on S.1539 Before the Subcommittee on Education of the Senate Comm. on Labor and Public Welfare*, 93rd Cong., 1st Sess. 2539 et seq. (1973); *Bilingual/Bicultural Education, Inequality in Education*, Harvard University, 1975; 9 Harvard Civil Rights, Civil Liberties L.Rev. 52 (1974); Cal. Ed. Code §5761.

---

1. This case is currently on appeal.

Congress has been responsive to this problem. Apart from provisions of Title VI of the Civil Rights Act of 1964 (upon which the U.S. Supreme Court relied in Lau v. Nichols, supra) and the Elementary and Secondary Education Act of 1965, Congress enacted the Bilingual Education Act (20 U.S.C. §880b (1970)) and, more recently, the Equal Educational Opportunities Act of 1974, 88 Stat. 515. The latter provides in part,

> "No state shall deny equal educational opporunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. §1703(f).

In conjunction with the Federal legislation, the Department of Health, Education and Welfare (HEW) has enacted appropriate regulations. See 45 C.F.R., Part 80; see also 35 Fed. Reg. 11595.

As Lau v. Nichols demonstrates, the courts have also been called upon to deal with the subject. Lau was a class action brought by a group of non-English-speaking Chinese students who alleged that the failure of the San Francisco Unified School District to provide bilingual instruction was a denial of equal protection within the meaning of the Fourteenth Amendment. The Supreme Court declined to rule on the constutitional issue. It agreed, however, that the lack of a bilingual program amounted to discrimination in education, in violation of the Civil Rights Act of 1964. The Court made clear that HEW guidelines requiring states to provide the necessary instruction, must be followed.

While the Court in Lau did not reach the constitutional question, a strong case can be made that the failure to provide the described instruction does violate the equal protection clause of the Fourteenth Amendment. See Serna v. Portales Municipal School, 499 F.2d 1147 (10th Cir. 1974), particularly the District Court decision at 351 F.Supp. 1279 (D.C.N.M. 1972). See also 9 Harvard Civil Rights, Civil Liberties L.Rev. 52 (1974); Comment, 62 Cal.L. Rev. 157 (1974); Johnson, The Constitutional Rights of Bilingual Children to an Equal Education Opportunity, 47 So.Cal.L.Rev. 943 (1974).

In any event, whether the rationale is the Fourteenth Amendment or the Civil Rights Act, it is clear that children with limited English skills are entitled to assistance in the form of bilingual education. This has been recognized in California where the Legislature enacted the Bilingual Education Act of 1972 (Ed. Code § 5761 et seq.), two years before the U.S. Supreme Court decided the Lau case. As the court's analysis in Lau indicates, however, the statute has had only limited effectiveness.

Since the 1972 statute apparently has not done the job, further efforts are required to solve the problem. One step in this direction was provided by the passage, in 1974, of additional legislation providing for the training of bilingual teachers. See Stats. 1974, Ch. 1496. Further steps were the adoption of new regulations by the Department of Education (5 Cal. Admin. Code § 3900 et seq.) and, finally, the issuance of the policy statement which is the subject of this discussion.

The policy statement indicates that the State Department of Education intends to attack this problem far more aggressively than it has in the past. It intends to require districts to make more concerted efforts to educate effectively children whose English skills are not fully developed. We believe this policy of the Department merely reflects the trend of the cases and the attitudes of prominent educators and scholars. Indeed, the failure to take steps of the types outlined in the Policy Statement might well make the Department and local school districts vulnerable to further attacks on the order of those made in Lau v. Nichols.

In your opinion request you stated that the Policy Statement had been criticized as "leading to a dual school system which is immoral, unjust, illegal, and unconstitutional." We understand this statement was made orally by an individual who addressed the Board at a recent meeting. No legal basis for the objection was offered nor was any analysis submitted, either at the meeting or subsequently. Accordingly, it is difficult for us to answer it except in the most general terms.

We cannot agree that the program outlined in the Board's Policy Statement will lead to a "dual school system." Thus, to discuss the evils of such a system is to dwell on imaginary imponderables.

In any event, it is not clear what is meant by a "dual school system" or why such a system would be illegal or unconstitutional, much less "immoral." The only substance we can ascribe to the criticism of the Policy Statement is a fear that bilingual education will threaten the dominant culture -- that instead of fostering assimilation of minority cultures into the mainstream of American society, it will promote divisiveness, friction, and destructive competition.

We believe the fear is ill-founded and is rooted in a xenophobic misconception. The considerable literature on the subject indicates that the pluralistic cultural heritage of this country is a prized resource and that far from undermining the American social structure, it tends to enrich it.

The mere fact that a child is taught in his primary language and that, accordingly, his cultural background is given recognition does not mean that a "dual school system" will result. One should not confuse the means used to achieve integration of limited-English-speaking students into the system with the goals of the program. In this connection a December 2, 1974 Memorandum of the Department of HEW is relevant. The Memorandum dealt with the Department's position on bilingual education. It stated in part,

> "P.L. 93-380 emphasizes strongly that a 'primary means by which a child learns is through the use of such child's language and cultural heritage... and that children of limited English-speaking ability benefit through the fullest utilization of multiple language and cultural resources.' But the law makes it equally clear that the ultimate goal of Federal bilingual education programs is 'to demonstrate effective ways of providing, for children of limited English-speaking ability, instruction designed to enable them, while using their native language, to achieve competence in the English language.'" See also Cal. Ed. Code § 71.

Finally we would observe that the contemplated programs are consistent with the California Constitution. Article IX, section 1, states,

> "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."

And Article IX, section 14 provides, in relevant part,

> "The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

We believe the Policy Statement complies with the general principles set forth in the above-quoted portions of the Constitution.

As we have indicated, action is needed to assist a substantial number of limited-English-speaking students in California. Congress, the State Legislature, and the Board of Education are endeavoring to be responsive to this need. There are no set formulae or procedures which dictate how the goal is to be achieved. The manner in which the Board is attempting to solve the problem reflects the thinking of educational scholars, concerned legislators, and State education officials. Far from leading to a dual school system, the program promises to make the existing system a more meaningqful educational experience for many students who would otherwise find attending school to be traumatic and counterproductive.

Very truly yours,

EVELLE J. YOUNGER

APPENDIX E

BERNARD CZESLA
CHIEF DEPUTY

OWEN K. KUNS
EDWARD K. PURCELL
RAY H. WHITAKER

F[illegible] L. DECHAMBEAU
I[illegible]T H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
EDWARD F. NOWAK
RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814

107 SOUTH BROADWAY
LOS ANGELES 90012

Legislative Counsel
of California

GEORGE H. MURPHY

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
JEFFREY D. ARTHUR
CHARLES C. ASBILL
JAMES L. ASHFORD
JOHN CORZINE
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
CARL NED ELDER, JR.
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FOSTER
HENRY CLAY FULLER III
ALVIN D. GRESS
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
JEAN KLINGENSMITH
VICTOR KOZIELSKI
STEPHEN E. LENZI
DANIEL LOUIS
JAMES A. MARSALA
DAVID R. MEEKER
PETER F. MELNICOE
MIRKO A. MILICEVICH
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
TRACY O. POWELL, II
MARGUERITE ROTH
HUGH P. SCARAMELLA
MARY SHAW
WILLIAM K. STARK
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
March 1, 1976

Honorable Peter R. Chacon
Assembly Chamber

Federal Financial Assistance to Bilingual Education Programs - #22468

Dear Mr. Chacon:

QUESTION

You have asked whether a staffing policy of a school district for a bilingual education program of the district conducted pursuant to the Bilingual Education Act of 1972 (Chapter 5.7 (commencing with Section 5761), Div. 6, Ed. C.) that is partly supported by federal financial assistance, whereby affirmative efforts are undertaken to employ personnel who reflect the ethnic and racial diversity of the school district population in the bilingual education program, is consistent with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving federal financial assistance.

OPINION

A staffing policy of a school district for a bilingual education program of the district that is partly supported by federal financial assistance, whereby affirmative efforts are undertaken to employ personnel who reflect the ethnic and racial diversity of the school district population in the bilingual education program conducted pursuant to the Bilingual Education Act of 1972, would not necessarily be in conflict with Title VI of the Civil Rights Act of 1964, depending upon the manner in which such staffing policy is implemented.[1]

---

[1] We are not considering, in this opinion, any question that might be presented by such a staffing policy under Section 13251 of the Education Code or Section 1420 of the Labor Code, both of which prohibit discrimination in employment based on race, color, religious creed, sex, or national origin.

ANALYSIS

Initially, we note that since we have not been submitted a specific staffing proposal and the manner in which it has been implemented, we are not determining the validity of any particular proposal but can only discuss the general principles of law which would be applicable to the question you have posed.

Chapter 5.7 (commencing with Section 5761) of Division 6 of the Education Code[2] is entitled "the Bilingual Education Act of 1972."[3]

The act authorizes school districts to participate in bilingual education programs. A primary goal of such programs is to develop fluency in English for limited or non-English speaking pupils (see Sec. 5761, Ed. C.). Funding for bilingual education programs conducted pursuant to the act can be provided either by the state or the federal government, or both (see Sec. 5762).

The act provides that all bilingual classes established pursuant thereto shall be conducted in both English and the primary language of the limited-English-speaking children (Sec. 5761.9), and instruction shall be provided by bilingual teachers who are defined as teachers "fluent in both English and the primary language of the limited-English-speaking pupils in a bilingual program" (subd. (e), Sec. 5761.2).

"Primary language" is defined as a "language other than English which is the language which the child first learned or the language which is spoken in the child's home environment" (subd. (d), Sec. 5761.2).

Since a bilingual teacher must be fluent in both English and a primary language other than English which is spoken in the home environment of the limited-English-speaking child or which the child first learned, we think it is very likely that teachers of the same ethnic or racial background as pupils who speak a primary language other than English may, in many instances, be particularly well qualified to provide the most meaningful education possible to such pupils. However, we think that under the act the primary consideration in determining whether an individual should be employed as a teacher must be the individual's qualifications and ability to impart the instruction involved, irrespective of the measures undertaken in recruiting candidates.

---

[2] All section references are to the Education Code, unless otherwise provided.

[3] Hereinafter referred to as the act.

Title VI of the Civil Rights Act of 1964[4] (42 U.S.C.A. 2000d et seq.) prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving federal financial assistance. Regulations which have been adopted by the Department of Health, Education and Welfare, which have as their purpose the effectuating of Title VI provisions, list federally-funded bilingual education programs conducted pursuant to 20 United States Code 880b to 880b-6 as one of the federal programs in which Title VI prohibitions apply (see 45 C.F.R. 80.1 et seq. and Appendix A thereof, #48).

Under federal law, the function of education remains primarily the responsibility of state and local authorities and can be regulated by the Department of Health, Education and Welfare only to the extent appropriate to effectuate provisions of Title VI (see *Alabama NAACP State Conference of Branches* v. *Wallace*, 269 F. Supp. 346, 351).

Employment activities of the type in question might involve so-called "affirmative action" programs to enhance the employment opportunities of persons affected by past discriminatory practices in that regard. The regulations of the Department of Health, Education, and Welfare implementing Title VI specify that affirmative action may be required where necessary to overcome the effects of past discrimination, and is permissible to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin (see 45 C.F.R., subparagraph (6), subd. (b), Sec. 803). Thus, if undertaken in the form of a proper affirmative action program, the employment activity in question would be entirely in accord with the requirements of federal law.

Again, as we have indicated, the employment of persons as teachers must be directed to serving the purposes of the California act, and the qualifications and ability of the individual to render the services involved should be the determinative factor in making selections. If this rule is observed, we think it is clear, also, that the anti-discrimination provisions of Title VI will not be violated.

---

[4] Hereinafter referred to as Title VI.

On the other hand, the activity in question might be undertaken on some more limited basis for the purpose of securing to the maximum extent possible the services of persons with special abilities in imparting bilingual instruction, in order to provide the most meaningful education possible for the pupils, as required by the California law.

We think a staffing policy for bilingual education programs that involves affirmative efforts to hire personnel who reflect the ethnic and racial diversity of the school district population in a bilingual education program, which is conducted in a manner which does not foster or encourage ethnically or racially discriminatory employment practices, and, in the selection of personnel, emphasizes ability and qualifications to perform the teaching services involved, would be valid under Title VI. Such a program could, under the California act, be effective in providing the most meaningful education possible for the children from disadvantaged backgrounds.

Therefore, a staffing policy of a school district for a bilingual education program of the district conducted pursuant to the act that is partly supported by federal financial assistance, which involves affirmative efforts to hire personnel who reflect the ethnic and racial diversity of the school district population in the bilingual education program could be consistent with Title VI provisions which prohibit discrimination on the ground of race, color, or national origin in programs and activities receiving federal financial assistance, depending upon the manner in which such staffing policy is implemented.

Very truly yours,

George H. Murphy
Legislative Counsel

By James W. Heinzer
James W. Heinzer
Deputy Legislative Counsel

JWH:nes

APPENDIX E

OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

- - - - - - - - - - - - -

OPINION	:	
of	:	No. CV 74/250
EVELLE J. YOUNGER Attorney General	:	JANUARY 23, 1976
JOANNE M. RABIN and ANTHONY S. DaVIGO	:	
Deputy Attorney General	:	

- - - - - - - - - - - - - - - - - -

HONORABLE WILSON RILES, DIRECTOR, DEPARTMENT OF EDUCATION, has requested an opinion on two related questions which may be stated as follows:

(1) Where a district establishes a bilingual educational program pursuant to Education Code section 5761 et seq. may bilingualism be considered a competency under Education Code section 13447 which would authorize a district to terminate a senior employee without such competency?

(2) Where a school district employs minorities or women pursuant to an affirmative action employment program may such persons be retained or recalled in preference to more senior employees without such characteristics? Does the result depend upon whether such plan was mandated by the United States Department of Health, Education and Welfare or the State Board of Education regulations?

Our conclusions are:

(1) Ability to teach in a bilingual educational program is a competency which will permit a school district that has adopted a bilingual education program pursuant to Education Code section 5761 et seq. to retain junior teachers as employees while terminating senior employees lacking such competency, pursuant to Education Code section 13447.

(2) A school district may not retain or recall its employees according to their membership in a minority or sex group. This conclusion is not affected by the fact that any person was hired pursuant to a state or federally mandated affirmative action program.

ANALYSIS

Education Code section 13447 1/ relates to reduction in the number of permanent employees in certain circumstances and provides in relevant part:

> "Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of permanent employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided, that the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render. . . .
>
> "The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render."

Section 13447 authorizes the retention of certain junior employees if an educational program requires teachers possessing specialized expertise and training (competency) not possessed by a senior employee. Krausen v. Solano County Junior College Dist., 42 Cal.App. 3d 394, 402, 403 (1974); Davis v. Gray, 29 Cal.App.2d 403, 408 (1938).

---

1. Unless otherwise indicated, all statutory references herein are to the California Education Code.

The advent of bilingual educational programs has created an additional area of curriculum specialization (California Bilingual Education Act of 1972. Stats. 1972, ch. 1258).2/ Section 5761.2 subdivision (a) defines "bilingual education" as:

> "the use of two languages, one of which is English, as a means of instruction in any subject or course. It is a means of instruction in which concepts and information are introduced in the dominant language of the student and reinforced in the second language. It recognizes that teaching of language skills is most meaningful and effective when presented in the context of an appreciation of cultural differences and similarities."

Section 5761 provides in part:

> "It is the purpose of this chapter to allow public schools . . . which choose to participate to establish bilingual education programs. The primary goals of such programs shall be to develop competence in two languages for all participating pupils, to provide positive reinforcement of the self-image of participating children, and to develop intergroup and intercultural awareness among pupils, parents and the staff in participating school districts."

Section 5761.2 subdivision (e) defines a "bilingual teacher" as one who is fluent in both English and the primary language of the limited-English-speaking children. Section 5764 provides that all teachers teaching classes funded by the Bilingual Education Act of 1972 shall be bilingual teachers as defined in section 5761.2 subdivision (e) *supra*. However,

> "in recognition of the shortage of qualified bilingual teachers, a district may, after diligent search and recruitment in California with the assistance of the Department of Education, request from the Superintendent of Public Instruction (a) waiver of certification requirements of

---

2. As a result of *Lau* v. *Nichols*, 414 U.S. 563 (1974) it is clear that the language in which an area of study is taught is distinctly different from the content of the study area. Indeed, the main thrust of *Lau* v. *Nichols* is that children who have the capacity to benefit from any area of study are denied equal educational opportunity unless their studies are presented to them in a language they can comprehend.

> such teachers, or (b) authorization to utilize for two years only, a monolingual teacher and bilingual aide or aides for classes funded under this chapter." (§ 5764).

In further recognition of the current problem of obtaining qualified bilingual teachers and the anticipated expansion of such programs, the Legislature established the Bilingual Teachers Corps Program by enactment of the California Statutes of 1974, chapter 1496 (§§ 5766 - 5766.2) and the Bilingual Cross-cultural Teachers' Preparation and Training Act of 1973 enacted by the California Statutes of 1973, chapter 1906 (§ 5768 - 5769.6).

The question then in essence is whether the bilingual education program is such a program that junior employees having the ability to serve the needs of the program may be retained by the school district to render that service where there are senior employees who lack bilingual fluency and the needed cross-cultural background being terminated either because of a reduction in enrollment or the abolishment of a different particular kind of service. The Legislature has clearly indicated its intent to stimulate the training and hiring of qualified bilingual-bicultural education teachers. §§ 5761, 5766, 5768. In our opinion the Legislature has found that the bilingual-bicultural personnel employed for these programs, if they satisfy the requirements of section 5761.2 subdivision (e), do possess special qualifications to be considered as a competency under section 13447 which would authorize a district to terminate a senior employee without such competency.

The school board of course must consider employees who are senior in service to any employee previously assigned to the bilingual program. Lacy v. Richmond Unified School District, 13 Cal.3d 469 (1975). Any such senior employee is entitled to show he or she has the competence, that is the cross-cultural knowledge and linguistic fluency, to teach in the bilingual program. Employees to be terminated for either reduction in attendance or reduction or discontinuance of a particular kind of service are entitled to notice and hearing under section 13433. (§ 13447). The employee is also entitled to a hearing to determine whether the senior employee is qualified to render any services being performed by junior employees. Krausen v. Solano County Junior College Dist., 42 Cal.App.3d, supra, at 402. Davis v. Gray, supra, 29 Cal.App.2d at 408. Where competency is not demonstrated by a senior employee, a junior employee having the ability to serve the needs of the program may be retained by the school district and the senior employee may be terminated.

The second inquiry is whether a school district which employs minorities or women pursuant to an affirmative action program may retain or recall such persons in preference to more senior employees without such characteristics. The problem, of course, is that where a substantial increase in the representation of minorities and women has been achieved through an affirmative action program, a seniority based layoff procedure would tend to offset these accomplished gains.

However, Congress has specifically exempted from the operation of Title VII of the 1964 Civil Rights Act (42 U.S.C. §§ 2000e to 2000e-15) "bona fide seniority system[s]." 42 U.S.C. § 2000e-2 subd. (h). This provision has been before the federal courts of appeals on a number of occasions, and the decisions have been singularly consistent (see Watkins v. United Steelworkers of America, Local No. 2369, 516 F.2d 41 (5th Cir. 1975), where most of these decisions are discussed). [3]

The basic proposition articulated in these decisions is that a seniority system that is neutral on its face will be upheld as "bona fide" even though layoffs under such a system will have a disproportionate impact on minority workers (Jersey Cen. Pow. & Li. Co. v. Local Un. 327, etc. of I.B.E.W., 508 F.2d 687, 705, 706, 710 (3d Cir. 1975); Watkins v. United Steelworkers of America, Local No. 2369, supra, 516 F.2d at 44-45), unless such a system supports present employment practices which perpetuate the effects of past discrimination. Local 189, United Papermak. & Paperwork. v. United States, 416 F.2d 980, 987-990 (5th Cir. 1969); Franks v. Bowman Transportation Company, 495 F.2d 398, 415 (5th Cir. 1974) cert. granted, 420 U.S. 989, 95 S.Ct. 1421, 43 L.Ed. 2d 669 (1975); Waters v. Wisconsin Steel Works of Int. Harvester Co., 502 F.2d 1309, 1318-1320 (7th Cir. 1974).

The typical situations where a seniority system perpetuated the effects of past discrimination were those in which the employer had in the past excluded minorities from particular more desirable departments or lines of job progression, and utilized a seniority system which precluded an employee from transferring his seniority earned in one department or job line to another.

Thus when the better departments and jobs were opened up to minority employees, they had to forego their seniority earned in their previous job as the price of making the transfer. Therefore, when a minority employee made such a transfer, he would be at a disadvantage relative to all the non-minority employees already in the department, even though he might have had greater overall seniority than any one of these employees. See United States v. Bethlehem Steel Corporation, 446 F.2d 652, 658 (2d Cir. 1971). In striking down seniority systems operating in this manner, the court in Local 189, United Papermak. & Paperwork. v. United States, supra, 416 F.2d 980, declared:

---

[3] There has been some diversity, however, in the rulings of the district courts. See Watkins v. Steelworkers, Local No. 2369, supra, 516 F.2d at 45.

> "Every time a Negro worker hired under the old segregated system bids against a white worker in his job slot, the old racial classification reasserts itself, and the Negro suffers anew for his employer's previous bias. It is not decisive therefore that a seniority system may appear to be neutral on its face if the inevitable effect of tying the system to the past is to cut into the employees present right not to be discriminated against on the ground of race. . . ." 416 F.2d at 988.

See also Franks v. Bowman Transportation Company, supra, 495 F.2d at 414-415; Waters v. Wisconsin Steel Works of Int. Harvester Co., supra, 502 F.2d at 1318-1320.

But while the courts have recognized the right to carry seniority from one department or job line to another where the employer has had a previous history of employment discrimination, the federal courts of appeals have not accepted the argument that minority employees should be given additional or "fictional" seniority based on the fact that they might have been hired sooner had there been no past discrimination. In considering this argument, the court in Local 189, supra, stated:

> "It is one thing for legislation to require the creation of fictional seniority for newly hired Negroes, and quite another thing for it to require that time actually worked in Negro jobs be given equal status with time worked in white jobs. To begin with, requiring employers to correct their pre-Act discrimination by creating fictional seniority for new Negro employees would not necessarily aid the actual victims of the previous discrimination. There would be no guaranty that the new employees had actually suffered exclusion at the hands of the employer in the past, or, if they had, there would be no way of knowing whether, after being hired, they would have continued to work for the same employer. In other words, creating fictional employment time for newly-hired Negroes would comprise preferential rather than remedial treatment. . . ." 416 F.2d at 995.

See also Franks v. Bowman Transportation Company, supra, 495 F.2d at 417-418; Jersey Cen. Pow. & Li. Co. v. Local Un. 327, etc. of I.B.E.W., supra, 508 F.2d at 709-710. And see Waters v. Wisconsin Steel Works of Int. Harvester Co., supra, 502 F.2d 1309, where the court stated:

> "Title VII mandates that workers of every race be treated equally according to their earned seniority. It does not require as the Fifth Circuit said, that a worker be granted fictional seniority or special privileges because of his race.
>
> "Moreover, an employment seniority system is properly distinguished from job or department seniority systems for the purposes of Title VII. Under the latter, continuing restrictions on transfer and promotion create unearned or artificial expectations of preference in favor of white workers when compared with black incumbents having an equal or greater length of service. Under the employment seniority system there is equal recognition of employment seniority which preserves only the earned expectations of long-service employees.
>
> "Title VII speaks only to the future. Its backward gaze is found only on a present practice which may perpetuate past discrimination. An employment seniority system embodying the 'last hired, first fired' principle does not of itself perpetuate past discrimination. To hold otherwise would be tantamount to shackling white employees with a burden of a past discrimination created not by them but by their employer. Title VII was not designed to nurture such reverse discriminatory preferences. [Citation omitted.]" 502 F.2d at 1319-1320. 4/

---

4. In Watkins v. United Steelworkers of America, Local No. 2369, supra, 516 F.2d at 45, the most recent case in this area, the court of appeals specifically left open the question of the right of a minority employee to claim additional seniority, if he could show an actual refusal to hire him at an earlier time. However, the court in Franks v. Bowman Transportation Company, supra, 495 F.2d at 417, specifically rejected such a claim for seniority to be dated from the time of the original rejected application. The Supreme Court in granting certiorari in Franks, (420 U.S. 989, 95 S.Ct. 1421, 43 L. Ed.2d 669 (1975)), now has this issue before it.

Section 13447 does not perpetuate past discriminatory practices, 5/ and is a "bona fide" seniority system within the meaning of Title 42, United States Code, section 2000e-2 subdivision (h). 6/ See *Watkins* v. *United Steelworkers of America, Local 2369*, *supra* 516 F.2d at 47-49. 7/

In any event, even assuming that the layoff procedure were not statutorily bound to the seniority standard, a school district could not retain or recall its employees according to their membership in a minority or sex group. Such preferences are expressly prohibited by state and federal law. Title 42, United States Code section 2000e-2 subdivision (a) provides as follows:

> "It shall be an unlawful employment practice for an employer-
>
> "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
>
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

It is, of course, beyond dispute that Title VII pertains to selection in terms of discharge or layoff as well as

---

5. See, section 13251; Lab. Code, § 1420.

6. Nondiscriminatory seniority systems have also been held not to be violative of Title 42, United States Code, section 1981. *Watkins* v. *United Steelworkers of America, Local 2369*, *supra*, 516 F.2d at 49-50; *Waters* v. *Wisconsin Steel Works of Int. Harvester Co.*, *supra*, 502 F.2d at 1320, n.4.

7. In the event of an ostensible conflict between two state statutes, the more specific enactment will control over the more general one. *Mitchell* v. *County Sanitation Dist.*, 164 Cal.App.2d 133, 141 (1958); Civ. Code § 3534. Under California law, while employment discrimination is prohibited generally by the Fair Employment Practice Act (Lab. Code § 1410 et seq.), this statute is silent with respect to the operation of seniority systems. Thus the specific statute requiring that layoffs be made according to seniority (§ 13447) is controlling over the more general Fair Employment Practice Act if indeed the two statutes are deemed to be in conflict.

selection in terms of hiring; retention is a privilege of employment. Similarly, section 1420 subdivision (a) of the Labor Code provides in pertinent part:

> "It shall be an unlawful employment practice unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:
>
> "(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, or sex of any person, to refuse to hire or employ him or to refuse to select him for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

Moreover, both the state and federal laws expressly preclude the notion that preference may be given for the purpose of correcting an imbalance which may exist in the work force in terms of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2 subd. (j); and see, Stats. 1967, ch. 1506, § 5; Hughes v. Superior Court, 32 Cal.2d 850 (1948), aff'd, 339 U.S. 460 (1949); 42 Ops.Cal.Atty.Gen. 33, 36 (1963); 43 Ops.Cal.Atty.Gen. 200 (1964). 8/ Perhaps the most determinative statements in this matter were made by the Supreme Court of the United States in two decisions pertaining to Title VII. In Griggs v. Duke Power Co., 401 U.S. 424 (1971), the Court said in part:

> "In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority is precisely and only what Congress has proscribed." ¶ 430, 431.

---

8. There is a substantial variance of judicial thinking with respect to the question whether a court may, in its inherent equitable power, and upon an actual determination that an employer has engaged in prior discriminatory practices, grant specific numerical relief. 42 U.S.C. § 2000e-5 subd. (g). Cf., Commonwealth of Pennsylvania v. Glickman, 370 F. Supp. 724, 734-737 (1974); Harper v. Mayor and City Council of Baltimore, 359 F. Supp. 1187 (1973), aff'd 486 F.2d 1134 (1973); Rios v. Enterprise Ass'n. Steamfitters Loc. 638, 501 F.2d 622 (1974). In any event, this opinion is limited to the power of an employer acting extrajudicially.

Again, in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Court cited its language in Griggs, and added:

> "There are societal as well as personal interests on both sides of this equation. The broad, overriding interest, shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and racially neutral employment and personnel decisions. In the implementation of such decisions, it is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise."

Nor should the provisions of any state or federally mandated affirmative action program be construed to the contrary. The regulations of the United States Department of Labor, Office of Federal Contract Compliance, Title 41 C.F.R., chapter 60, part 60-1, section 60-1.40, and part 60-2 known as "Revised Order No. 4" pertaining to affirmative action goals and timetables, expressly provide in section 60-2.30 that the establishment of goals is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin. Moreover, these regulations are promulgated under the authority of Executive Order 11246 (1965) as amended by Executive Order 11375 (1967) which expressly prohibits discrimination by government contractors against any employee or applicant for employment because of race, color, religion, sex, or national origin. (Part II, subpart B, section 202). Because of apparent confusion in this regard, the four federal agencies with major equal employment enforcement responsibilities (United States Department of Justice; Equal Employment Opportunity Commission; Office of Federal Contract Compliance; United States Civil Service Commission), jointly issued a memorandum, dated March 23, 1973, in which the following federal policy was expressed:

> "This Administration has, since September 1969, recognized that goals and timetables are in appropriate circumstances a proper means for helping to implement the nation's commitments to equal employment opportunities through affirmative action programs. On the other hand, the concepts of quotas and preferential treatment based on race, color, national origin, religion and sex are contrary to the principles of our laws, and have been expressly rejected by this Administration." CCH Empl. Prac. Guide, par. 3775.

Finally, where the regulations of the Department of Health, Education, and Welfare promulgated under the authority of Title VI of the Civil Rights Act of 1964, Title 42, United

States Code section 2000d, pertain to employment, such regulations expressly proscribe discrimination based on race, color, or national origin. Title 45 C.F.R., part 80, § 80.3.

Similarly, the California Code of Fair Practices, an executive order issued by the Governor on October 1, 1971, provides in article XI thereof that the State Board of Education shall pursue programs promoting fair employment practices for certified teachers. In this regard, the board enacted its regulations pertaining to affirmative action programs on April 11, 1974. Title 5, Cal. Admin. Code §§ 30-36. Section 31 contains the Board's declaration of policy:

> "The State Board of Education maintains as its policy to provide equal opportunity in employment for all persons and to prohibit discrimination based on race, sex, color, religion, age, physical handicap, ancestry, or national origin in every aspect of personnel policy and practice in employment, development, advancement, and treatment of employees; and to promote the total realization of equal employment opportunity through a continuing affirmative action program."

In short, neither the provisions of these regulations themselves nor the board's explanatory Guidelines For Affirmative Action Employment Programs, dated March 1, 1975, purport to authorize the granting of preferential treatment.

Neither the state nor the federal affirmative action regulations are, nor could they be, in conflict with the fundamental precepts of equal employment opportunity. Consequently, an affirmative action program predicated upon such regulations may not be construed to require or to authorize preferential treatment even, as previously noted, in the absence of statutory constraints in terms of seniority. 9/ As the court said in Anderson v. San Francisco Unified School District, 357 F. Supp. 248, 249 (1972): "Preferential treatment under the guise of 'affirmative action' is the imposition of one form of racial discrimination in place of another."

---

9. This is not to say, of course, that in the absence of any such statutory constraint, selection could not be based upon some job related qualification which correlates highly but does not specifically identify with (except in the case of a bona fide occupational qualification), a particular ethnic or sex group. Bilingual fluency is an example. Other suggested qualifications might include the ability to relate with minority subcultures. However at this time we do not pass upon the validity of such a qualification. Jackson v. Poston, 337 N.Y.S.2d 108, 40 A.D.2d 19 (1972).

In relation to appropriate affirmative action endeavors, it must be noted that there are significant distinctions between efforts directed toward the community at large to recruit more minorities into the examination process and procedures directed to minority employees already within the work force. With respect to recruitment, special effort applicable to the minority community, in addition to the general recruitment process, is clearly proper as a means of ensuring that information concerning job opportunities is not confined to certain segments of the community, and as a means of breaking down those barriers of habit and attitude which have prevented minorities from applying for such jobs. The function of such affirmative recruitment efforts is not to afford special advantages to any particular group, but to ensure an equalization of employment opportunities for all groups.

Unlike the situation prevailing in the community at large, however, minority members within the work force are in substantially equal circumstances with their fellow non-minority employees who hold the same kind of jobs. Franks v. Bowman Transportation Company, supra, 495 F.2d at 417, n.16. Thus, no particular individual [10] within the work force would appear to have a priority concerning the need for continued employment. Responding to such needs on a racial, ethnic, or sexual basis would not have the effect of equalizing employment opportunities but, on the contrary, would constitute prohibited preferential treatment. See, Griggs v. Duke Power Co., supra, 401 U.S. at 430-431.

* * * * *

---

[10] Title VII expressly prohibits discrimination against "any individual" on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2 subd. (a), supra. Similarly, Labor Code section 1420 subdivision (a), supra, refers to "any person."

APPENDIX F

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. [illegible]

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent
National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial
of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English

language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.